

## Memorandum 96-85

### Judicial Review of Agency Action: Conforming Revisions

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Conforming revisions and comments required by the proposed law on judicial review are now 233 pages in length, so we are not reproducing them here. A table of contents for conforming revisions is attached, showing affected agencies and code sections. The staff does not plan to discuss this Memorandum at the meeting. It is presented for information only.

The current text of conforming revisions may be obtained at the Commission's web site on the Internet at <<http://www.clrc.ca.gov>>. Follow the "Public Comment" link and look for "JudRevConfRev." This may be downloaded from an associated FTP directory. (This document has been revised several times. This is the latest version, dated November 23, 1996.) A hard copy of conforming revisions, or relevant portions, may be obtained on request.

Conforming revisions with significant policy implications are included in the judicial review draft, rather than in the conforming revisions document. These are:

Exemption for State Bar Court: Bus. & Prof. Code § 6089 (added).  
Alcoholic Beverage Control Appeals Board: Bus. & Prof. Code §§ 23090, 23090.1, 23090.2, 23090.3, 23090.4, 23090.5, 23090.6, 23090.7.  
Taxpayer actions: Code Civ. Proc. § 526a.  
Exemption for validating proceedings: Code Civ. Proc. § 871 (added).  
Writ of mandate: Code Civ. Proc. §§ 1085, 1085.5, 1094.5, 1094.6.  
Commission on Professional Competence: Educ. Code § 44945.  
Board of Governors of California Community Colleges: Educ. Code § 87682.  
Costs in civil actions resulting from administrative proceedings: Gov't Code § 800.  
Public Employment Relations Board: Gov't Code §§ 3520, 3542, 3564.  
Administrative Procedure Act — rulemaking: Gov't Code § 11350.  
Administrative Procedure Act — adjudication: Gov't Code §§ 11420.10, 11425.50, 11523, 11524.  
State Personnel Board and Department of Personnel Administration: Gov't Code § 19576.1.  
Local agencies: Gov't Code §§ 54963 (added), 65009.  
Zoning administration: Gov't Code § 65907.  
Private hospital boards: Health & Safety Code §§ 1339.62-1339.64 (added).

Agricultural Labor Relations Board: Lab. Code § 1160.8.  
Workers' Compensation Appeals Board: Lab. Code §§ 5950, 5951, 5952, 5953,  
5954, 5955, 5956, 6000.  
California Environmental Quality Act: Pub. Res. Code §§ 21168, 21168.5.  
Exemption for power plant siting decisions of State Energy Resources  
Conservation and Development Commission: Pub. Res. Code § 25531.5  
(added).  
Exemption for Public Utilities Commission: Pub. Util. Code § 1768 (added).  
Property taxation: Rev. & Tax. Code §§ 2954, 2955, 2956, 5140.  
State Board of Equalization: Rev. & Tax. Code § 7279.6.  
California Unemployment Insurance Appeals Board: Unemp. Ins. Code  
§ 1243.  
Department of Motor Vehicles: Veh. Code §§ 13559, 14401.  
Department of Social Services: Welf. & Inst. Code § 10962.

Respectfully submitted,

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## CONFORMING REVISIONS

### Department of Consumer Affairs

#### **Bus. & Prof. Code § 125.7 (amended). Restraining orders**

125.7. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2, may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review ~~pursuant to Section 1094.5~~

under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

**Comment.** Section 125.7 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Bus. & Prof. Code § 125.8 (amended). Temporary order restraining licensee**

125.8. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which ~~he~~ the licensee is licensed.

(b) ~~Such~~ The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the request

and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at ~~such the~~ time the board's decision is subject to judicial review ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 125.8 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### Denial, Suspension, and Revocation of Licenses Generally

#### **Bus. & Prof. Code § 494 (amended). Interim suspension or restriction order**

494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in ~~Section 11523 of the~~

Government Code Article 9 (commencing with Section 1123.910) of Chapter 3 of Title 2 of Part 3 of the Code of Civil Procedure.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

**Comment.** Section 494 is amended to revise references to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Healing Arts Generally

### **Bus. & Prof. Code § 809.8 (amended). Judicial review, discovery, and testimony**

809.8. Nothing in Sections 809 to 809.7, inclusive, shall affect the availability of judicial review under ~~Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure nor the provisions relating to discovery and testimony in Section 1157 of the Evidence Code or Sections 1370 and 1370.1 of the Health and Safety Code.

**Comment.** Section 809.8 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### Medical Board of California

**Bus. & Prof. Code § 2087 (amended). Action to compel approval or admission**

2087. If any medical school is not approved by the Division of Licensing or any applicant for examination is rejected by it, then the school or the applicant may commence an action in the superior court as provided in Section 2019 against the division to compel it to approve the school or to admit the applicant to examination or for any other appropriate relief. If the applicant is denied admittance to the examination or a certificate on the grounds of unprofessional conduct, the provisions of Article 12 (commencing with Section 2220) shall apply. In such an the action the court shall proceed under ~~Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, ~~except that the court may not exercise an independent judgment on the evidence.~~ The action shall be speedily determined by the court and shall take precedence over all matters pending therein except criminal cases, applications for injunction, or other matters to which special precedence may be given by law.

**Comment.** Section 2087 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language prohibiting the court from exercising independent judgment on the evidence is deleted as unnecessary, since under Code of Civil Procedure Section 1123.430 the standard of review of factfinding is substantial evidence in light of the whole record.

**Bus. & Prof. Code § 2337 (amended). (Second of two; operative January 1, 1996, until January 1, 1999) Calendar preference**

2337. Notwithstanding any other provision of law, judicial review of final decisions of an administrative law judge of the Medical Quality Hearing Panel, or the Division of Medical Quality or the Board of Podiatric Medicine in the event a review is ordered pursuant to Section 2335, shall be ~~by writ of mandamus pursuant to Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure before a district court of appeal. The court of appeal shall exercise its independent judgment in review of the proceedings below, and, where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced, or that was improperly excluded at the hearing, it may admit the evidence without remanding the case.

The Judicial Council may adopt rules to allocate these cases to a particular panel or panels within each district for consistent and efficient consideration. Review shall be entitled to calendar priority, and the hearing shall be set no later than 180 days from the filing of the action.

This section shall become operative on January 1, 1996, and shall be repealed as of January 1, 1999, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

**Comment.** Section 2337 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### Board of Pharmacy

**Bus. & Prof. Code § 4300 (amended). Suspension or revocation of license; judicial review**

4300. (a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a pharmacist license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to judicial review by the superior court pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 4300 (added by Chapter 890 of the Statutes of 1996) is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Board of Examiners in Veterinary Medicine

### **Bus. & Prof. Code § 4875.6 (amended). Procedure to contest citation or penalty**

4875.6. (a) If a veterinarian or an unlicensed person desires to administratively contest a civil citation or the proposed assessment of a civil penalty therefor, he or she shall, within 10 business days after receipt of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer or his or her designee. The executive officer or his or her designee shall hold, within 60 days from the receipt of the request, an informal conference. At the conclusion of the informal conference, the executive officer may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty, and he or she shall state with particularity in writing his or her reasons for the action, and shall immediately transmit a copy thereof to the board, the veterinarian or unlicensed person, and the person who submitted the verified complaint. If the veterinarian or unlicensed person desires to administratively contest under subdivision (c) a decision made after the informal conference, he or she shall inform the executive officer in writing within 30 calendar days after he or she receives the decision resulting from the informal conference.

If the veterinarian or unlicensed person fails to notify the executive officer in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made after an informal conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision made after an informal conference shall be deemed a final order of the board and shall not be subject to further administrative review.

Notwithstanding any other provision of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(b) A veterinarian or an unlicensed person may, in lieu of contesting a citation pursuant to this section, transmit to the board the amount assessed in the citation as a civil penalty, within 10 business days after receipt of the citation. An unlicensed person may notify the board and file a petition for a ~~writ of administrative mandamus~~ judicial review under ~~Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within 30 calendar days after receipt of the citation, without engaging in an informal conference or administrative hearing. If a petition is not filed pursuant to this section, payment of any fine shall not constitute an admission of the violation charged.

(c) If a veterinarian or an unlicensed person has notified the executive officer that he or she intends to administratively contest the decision made after the informal conference, the executive officer shall forward the matter to the Attorney General's office who shall prepare a notice of appeal of the citation and civil

penalty. After the hearing, the board and administrative law judge shall issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief which shall include, but need not be limited to, a notice that the failure of a veterinarian or unlicensed person to comply with any provision of the board's decision constitutes grounds for suspension, or denial of licensure, or both. The administrative proceedings under this section shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the board shall have all the powers granted therein.

(d) After the exhaustion of the review procedures provided for in this section or if the time for all appeals has passed, the board may bring an action in the appropriate court in the county in which the offense occurred to recover the civil penalty and obtain an order compelling the cited person to comply with the order of abatement. In that action, the complaint shall include a certified copy of the final order of the board, together with the factual findings and determinations of the board and administrative law judge. The findings shall be prima facie evidence of the facts stated therein, and in the absence of contrary evidence may serve as the basis for the issuance of the judgment and order.

(e) Failure of a licensee to pay a civil penalty within 30 days of the date of receipt of the assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. When a citation is not contested and a civil penalty is not paid, the full amount of the assessed civil penalty shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and civil penalty.

(f) Any civil penalties received under this chapter shall be deposited in the Veterinary Medical Board Contingent Fund.

**Comment.** Section 4875.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Contractors' State License Board

### **Bus. & Prof. Code § 7071.11 (amended). Action on bond**

7071.11. (a) A copy of the complaint in a civil action commenced by a person claiming against a bond required by this article shall be served by registered or certified mail upon the registrar by the clerk of the court at the time the action is commenced and the registrar shall maintain a record, available for public inspection, of all actions so commenced. The claim of any employee of the contractor for wages and fringe benefits shall be a preferred claim against the bond. The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars (\$4,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their

respective claims with priority to claims for wages and fringe benefits. Any action, other than an action to recover fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover fringe benefits shall be brought within six months from the date that the fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the fringe benefit contributions were due.

(b) When the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, notify the registrar. The notice shall contain, on a form prescribed by the registrar, the name and license number of the contractor, the surety bond number, the amount of payment, the statutory basis upon which the claim is made, and the names of the person or persons to whom payments are made.

(c) Any judgment or admitted claim against, or good faith payment from, a bond required by this article shall constitute grounds for disciplinary action against the licensee, except in those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment. The license may not be reissued or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, the license may not be reissued or reinstated while any surety remains unreimbursed for loss and expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to disciplinary action under this section. The board shall require the licensee to file a new bond in an amount as required pursuant to Section 7071.8.

(d) Legal fees may not be charged against the bond by the board.

(e) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment,

claims for the nonpayment thereof shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Any action, other than an action to recover fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

**Comment.** Section 7071.11 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Bureau of Security and Investigative Services

### **Bus. & Prof. Code § 7502.4 (amended). Restraining order**

7502.4. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under this chapter has engaged or is about to engage in any act which constitutes a violation of this chapter may, upon a petition filed by the director and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the

person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If an affidavit in support of the petition show that the licensee has engaged or is about to engage in acts or ~~omissions~~ omissions constituting a violation of this chapter and if the court is satisfied that permitting the licensee to continue to engage in the business and profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavit that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed by the director pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the licensee requests a hearing on the accusation, the director shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at ~~such~~ the time the director's decision is subject to judicial review ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 7502.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### Structural Pest Control Board

#### **Bus. & Prof. Code § 8662 (amended). Appeal of fine or suspension; judicial review**

8662. (a) Whenever the right of a structural pest control licensee or registered company to make pesticide applications has been suspended or the licensee or registered company has been fined pursuant to Section 8617, the party suspended or fined may appeal to the Disciplinary Review Committee within 10 days of receipt of the fine or suspension order.

(b) The following procedures shall apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her or its authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence to the committee. Thereafter, 10 days shall be given the parties to rebut the written evidence and make written application to the committee to present oral or written arguments.

(3) An application to present written arguments shall be granted, but the committee shall have discretion to grant oral arguments or to grant both oral and written arguments. Further written argument shall be submitted to the committee within 10 days of the submission of the application.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given each party at least 10 days before the date set therefor. The times may be altered by mutual agreement of the parties. If a written argument is submitted, all parties shall be notified thereof and shall be given the opportunity to simultaneously file briefs within the time specified by the committee.

(5) At any time written evidence, including evidence in rebuttal, is submitted to the committee, a copy shall be immediately provided to the other party.

(6) The committee shall decide the appeal on any oral or written argument, briefs, and evidence that the committee may have received.

(7) The committee shall render its written decision within 45 days of the date of appeal or within 15 days from the date of oral arguments or the filing of briefs pursuant to paragraph (4). If the committee does not reach a decision in the time required in this subdivision, the order issued pursuant to Section 8617 shall be null and void.

(8) On an appeal pursuant to this section, the committee may sustain, modify by reducing the time of suspension or the amount of the fine levied, or reverse the decision. A copy of the committee's decision shall be delivered or mailed to each party.

(9) Review Judicial review of the decision of the committee may be sought by the licensee or registered company ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 8662 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Bus. & Prof. Code § 8698.3 (amended). (Operative until January 1, 1997) Civil penalties; judicial review**

8698.3. (a) The Director of the Department of Pesticide Regulation may levy a civil penalty against a person violating this chapter, including any regulation adopted pursuant to this chapter.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to

be heard, including the right to review the director's evidence and a right to present evidence on his or her own behalf.

(c) ~~Review~~ Judicial review of the decision of the director may be sought by the person against whom the penalty was levied, ~~within 30 days of receiving notice of the decision, pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for ~~a writ of administrative mandamus~~ judicial review or affirms the decision of the director, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

**Comment.** Section 8698.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former 30-day time limit of Section 8698.3 is superseded by Code of Civil Procedure Section 1123.640.

### Real Estate Commissioner

#### **Bus. & Prof. Code § 10471.5 (technical amendment). Notice of commissioner's decision**

10471.5. (a) The commissioner shall give notice of a decision rendered with respect to the claim to the claimant and to a judgment debtor who has filed a timely response to the claim in accordance with Section 10471.1.

(b) If the application is denied, the notice to the claimant and judgment debtor shall include the following:

“Claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application in the court in which the underlying judgment was entered not later than six months after receipt of this notice, pursuant to Section 10472 of the Business and Professions Code.”

(c) If the decision of the commissioner is to make a payment to the claimant out of the Recovery Account, the following notice shall be given to the judgment debtor along with a copy of the decision of the commissioner and the notice required by Section 1123.630 of the Code of Civil Procedure:

“The decision of the Real Estate Commissioner on the claim of \_\_\_\_\_ is to pay \$\_\_\_\_\_ from the Recovery Account. A copy of that decision is enclosed.

“Pursuant to Section 10475 of the Business and Professions Code, all of your licenses and license rights under the Real Estate Law will be suspended effective on the date of the payment, and you will not be eligible for reinstatement of any license issued under authority of the Real Estate Law until you have reimbursed the Recovery Account for this payment plus interest at the prevailing legal rate.”

“If you desire a judicial review of the suspension of your licenses and license rights, you may petition the superior court in the county in which the judgment which is the basis of this claim was rendered, for a writ of mandamus. ~~To be timely, the petition must be filed with the court within 30 days of receipt of this notice review.~~”

**Comment.** Section 10471.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former requirement of notice of the time to file a petition for review is superseded by Code of Civil Procedure Section 1123.630.

### Department of Food and Agriculture (part 1)

#### **Bus. & Prof. Code § 12015.3 (amended). (Operation contingent) Civil penalty**

12015.3. (a) The sealer may levy a civil penalty against a person violating any provision of this division or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing. The request shall be made within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the sealer’s evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the sealer may take the action proposed without a hearing.

(c) If the person upon whom the sealer levied a civil penalty requested and appeared at a hearing, the person may appeal the sealer’s decision to the secretary within 30 days of the date of receiving a copy of the sealer’s decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the sealer’s decision. The appellant shall file a copy of the appeal with the sealer at the same time it is filed with the secretary.

(2) The appellant and the sealer may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, present the record of

the hearing including written evidence that was submitted at the hearing and a written argument to the secretary stating grounds for affirming, modifying, or reversing the sealer's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the sealer, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the sealer's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the sealer's decision, modify the sealer's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the sealer's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the sealer's notice of proposed action given pursuant to subdivision (b). A copy of the secretary's decision shall be delivered or mailed to the appellant and the sealer.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review Judicial review of a decision of the secretary may be sought by the appellant ~~within 30 days of the date of the decision pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(d) After the exhaustion of the appeal and review procedures provided in this section, the sealer, or his or her representative, may file a certified copy of a final decision of the sealer that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her authorized representative rendered on an appeal from the sealer's decision and a copy of any order that ~~denies a petition for a writ of administrative mandamus~~ judicial review or affirms the decision of the secretary, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) If the civil penalty is levied by the State Sealer, the revenues derived therefrom shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation, shall be used by the State Sealer to carry out his or her

responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this division.

(f) This section does not apply to violations involving utility meters, or to violations involving the testing and inspection of utility meters, in mobilehome parks, recreational vehicle parks, or apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters.

(g) Upon the written request of the Attorney General of California, any district attorney, or any city prosecutor or city attorney described in subdivision (a) of Section 17206, the State Sealer or the county sealer within their respective jurisdictions, shall provide all reports and records regarding any actions that occurred within the four months prior to the date of the written request in which civil penalties were levied pursuant to this section or liability for costs incurred are determined pursuant to Section 12015.5.

(h) This section shall become operative 30 days after the regulations adopted pursuant to Section 12028 are filed with the Secretary of State, and shall remain in effect until a date that is two years later, and as of the next following January 1 is repealed, unless a later enacted statute which becomes operative on or before that January 1, deletes or extends that date.

**Comment.** Section 12015.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (c)(9) prescribing the time limit for a petition is superseded by Code of Civil Procedure Section 1123.640.

#### Attorney General (part 1)

**Bus. & Prof. Code § 17550.18 (amended). (Operative until January 1, 1999)  
Severability; burden of proof; proceeding challenging decision of Attorney General**

17550.18. (a) If any provision of this article or the application thereof to any person or circumstance is held invalid, ~~such~~ the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

(b) In a criminal action, a seller of travel has the burden of producing evidence to establish any exception to the provisions of this chapter; and in a civil action, a seller of travel has the burden of proof to establish any exception to the provisions of this chapter.

(c) Any ~~action or~~ proceeding to attack, review, set aside, void, change, or annul any decision, determination, or finding of the Attorney General or his or her delegate pursuant to Article 2.6 (commencing with Section 17550) or Article 2.7 (commencing with Section 17550.35) shall be ~~in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

~~In such action or the proceeding, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion shall be found by the court only if the decision, determination, or finding was not supported by substantial evidence in light of the entire written record before the Attorney General or his or her delegate at the time the decision, determination, or finding was made. The record before the court shall be the same written record upon which the Attorney General or his or her delegate acted.~~

**Comment.** Section 17550.18 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to substantial evidence review is continued in substance in Code of Civil Procedure Section 1123.430 (standard of review of factfinding). See also Code Civ. Proc. § 1123.450 (review of agency exercise of discretion). The former provision on the record for review is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record) and 1123.850 (new evidence on judicial review)

### California Horse Racing Board

#### **Bus. & Prof. Code § 19463 (amended). Finality of action**

19463. The action of the board in suspending or revoking a license issued under this chapter is final, except that the propriety of the action of suspending or revoking a license or of any other final administrative action of the board is subject to judicial review by any court of competent jurisdiction if the action is commenced in the court within 30 days of the board's action under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The action of the board shall stand unless and until reversed by a court. ~~No action may be commenced in a court to attack, review, set aside, void, or annul any final action of the board unless it is commenced within 30 days of the board's action.~~

**Comment.** Section 19463 is amended to make clear that judicial review of board action is under the judicial review provisions of the Code of Civil Procedure. The former last sentence of Section 19463 (30-day limitation period) is superseded by Code of Civil Procedure Section 1123.640 (limitation period for adjudicative proceeding). For administrative action other than in an adjudicative proceeding, the general limitations periods for ordinary civil actions will apply, as determined by the nature of the right asserted. See, e.g., *Allen v. Humboldt County Board of Supervisors*, 220 Cal. App. 2d 877, 884-85, 34 Cal. Rptr. 232, 236 (1963); see also *Berkeley Unified School Dist. v. State*, 33 Cal. App. 4th 350, 362-63, 365, 39 Cal. Rptr. 2d 326, 333, 335 (1995).

### Attorney General (part 2)

#### **Bus. & Prof. Code § 19813 (amended). Conduct of proceedings**

19813. All hearings relating to the denial, suspension, or violation of a registration shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. These proceedings shall be subject to judicial review pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 19813 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Civ. Code § 1812.203 (amended). Filing and updating disclosure statements**

1812.203. (a) The seller of any seller assisted marketing plan shall pay an annual fee in the amount of one hundred dollars (\$100) and annually file with the Attorney General a copy of the disclosure statements required under Sections 1812.205 and 1812.206, as well as a list of the names and resident addresses of those individuals who sell the seller assisted marketing plan on behalf of the seller. The first filing shall be made at least 30 days prior to placing any advertisement or making any other representations to prospective purchasers. The first filing shall not be deemed to be effective until a notice of filing has been issued by the Attorney General. The disclosure statements on file shall be updated through a new filing and payment of a fee in the amount of thirty dollars (\$30), whenever material changes occur during the year following the annual filing and the updated filing shall include all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and resident addresses of all current salespersons and all salespersons who have acted on behalf of the seller since the previous filing, whether the annual filing or an updated filing, indicating which salespersons are still active and which no longer act on behalf of the seller. Each seller of a seller assisted marketing plan shall file the annual renewal filing, whether or not any update filings have been made, at least 10 days before one year has elapsed from the date of the notice of filing issued by the Attorney General, and at least 10 days before the same date every year thereafter. The annual renewal filing shall include all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and addresses of the residences of all current salespersons and all salespersons who have acted on behalf of the seller since the previous filing (whether the annual filing or an updated filing), indicating which salespersons are still active and which no longer act on behalf of the seller. The annual renewal filing fee shall be one hundred dollars (\$100). If an annual renewal filing is not filed as required, the previous filing shall be deemed to have lapsed and the seller shall be prohibited from placing any seller assisted marketing plan advertisements or making any other representations to prospective purchasers of seller assisted marketing plan until a new annual filing is made and a new notice of filing has been issued by the Attorney General.

(b) The Attorney General may send by certified mail to the address set forth in the seller assisted marketing plan filing an intent to issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of any filing if he or she finds the following:

(1) That there has been a failure to comply with any of the provisions of this title.

(2) That the offer or sale of the seller assisted marketing plan would constitute a misrepresentation to, or deceit of, or fraud on, the purchaser.

(3) That any person identified in the filing has been convicted of an offense under paragraph (1) of subdivision (b) of Section 1812.206, or is subject to an order or has had a civil judgment entered against him or her as described in paragraphs (2) and (3) of subdivision (b) of Section 1812.206, and the involvement of that person in the sale or management of the seller assisted marketing plan creates an unreasonable risk to prospective purchasers.

(c) The notice referred to shall include facts supporting a suspension or revocation. If the seller assisted marketing plan does not submit to the Attorney General, under penalties of perjury signed by an owner or officer of the seller assisted marketing plan, within 10 days of receipt of the intent to issue a stop order, a refutation of each and every supporting fact set forth in the notice, and each such fact not refuted shall be deemed, for purposes of issuance of the order, an admission that the fact is true. If, in the opinion of the Attorney General, and based upon supporting facts not refuted by the seller assisted marketing plan, the plan is offered to the public without compliance with this title, the Attorney General may order the seller to desist and refrain from the further sale or attempted sale of the seller assisted marketing plan unless and until a notice of filing has been issued pursuant to this section. Until that time, the registration shall be void. The order shall be in effect until and unless the seller assisted marketing plan files a ~~proceeding in superior court pursuant to Section 1085 or 1094.5~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or seeks other judicial relief and serves a copy of the proceeding upon the Attorney General.

**Comment.** Section 1812.203 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to “other judicial relief” is deleted, since the judicial review provisions of the Code of Civil Procedure provide the exclusive means of judicial review. See Code Civ. Proc. § 1121.120.

## State Board of Equalization & Franchise Tax Board

### **Code Civ. Proc. § 706.075 (amended). Withholding order for taxes**

706.075. (a) This section applies to any withholding order for taxes issued under this article.

(b) Together with the withholding order for taxes, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his the taxpayer's right to hearings and remedies provided in this chapter. The notice shall include the information required by Section 1123.630 of this code. Within 10 days from the date of service, the employer shall deliver to the taxpayer a copy of the order and the notice, except that immediate delivery shall be made where a jeopardy withholding order for taxes has been served. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make ~~such~~ the delivery.

(c) The state shall provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes, and the taxpayer may request ~~such a~~ the hearing at any time after service of the order. If the taxpayer requests a hearing, the hearing shall be provided, and the matter shall be determined, within 15 days after the request is received by the state. The determination of the amount to be withheld is subject to the standard provided in subdivision (b) of Section 706.051. Judicial review of the determination made pursuant to this subdivision by the state may be had only if a petition for ~~a writ of mandate pursuant to Section 1094.5~~ review under Title 2 (commencing with Section 1120) of Part 3 is filed within 90 days from the date that the written notice ~~of the state's determination required by this section~~ was delivered or mailed to the taxpayer.

(d) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with subdivision (b).

**Comment.** Section 706.075 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### State Regulatory Agencies

#### **Code Civ. Proc. § 1028.5 (technical amendment). Action between small business and regulatory agency**

1028.5. (a) In any civil action between a small business or a licensee and a state regulatory agency, involving the regulatory functions of a state agency as applied to a small business or a licensee, if the small business or licensee prevails, and if the court determines that the action of the agency was undertaken without substantial justification, the small business or licensee may, in the discretion of the court, be awarded reasonable litigation expenses in addition to other costs. Funds for ~~such~~ the expenses and costs shall be paid from funds in the regular operating budget of the state regulatory agency where the appropriation therefor encompasses the payment of ~~such~~ the costs and expenses, and not from unappropriated money in the General Fund.

(b) “Reasonable litigation expenses” means any expenses not in excess of seven thousand five hundred dollars (\$7,500) which the judge finds were reasonably incurred in opposing the agency action, including court costs, expenses incurred in administrative proceedings, attorney’s fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

(c) “Small business” means a business activity that is all of the following:

(1) Independently owned and operated.

(2) Not dominant in its field of operation.

(3) Not exceeding the following annual gross receipts or other criteria in the categories of:

(A) Agriculture, one million dollars (\$1,000,000).

(B) General construction, nine million five hundred thousand dollars (\$9,500,000).

(C) Special trade construction, five million dollars (\$5,000,000).

(D) Retail trade, two million dollars (\$2,000,000).

(E) Wholesale trade, nine million five hundred thousand dollars (\$9,500,000).

(F) Services, two million dollars (\$2,000,000).

(G) Transportation and warehousing, one million five hundred thousand dollars (\$1,500,000).

(H) A manufacturing enterprise not exceeding 250 employees.

(I) A health care facility not exceeding 150 beds or one million five hundred thousand dollars (\$1,500,000) in annual gross receipts.

(J) Generating and transmitting electric power not exceeding 4,500 megawatt hours annually.

(d) “Licensee” means any person licensed by a state agency who does not qualify as a small business, but whose annual gross receipts from the use of such the license do not exceed one million dollars (\$1,000,000).

(e) A small business or a licensee shall be deemed to prevail in any action in which there is no adjudication, stipulation, or acceptance of liability on the part of the small business or licensee.

(f) A small business or licensee shall not be deemed to have prevailed in actions commenced at the instance of, or on the basis of a complaint filed by, a person who is not an officer, employee, or other agent of the state regulatory agency if the action is dismissed by the agency upon a finding of no cause for the action, or is settled by the agency and small business or licensee without a finding of fault.

(g) Section ~~800~~ 1123.950 of the ~~Government Code~~ of Civil Procedure shall not apply to actions which are subject to the provisions of this section.

(h) Every state regulatory agency against which litigation expenses have been awarded under this section shall, at the time of submission of its proposed budget pursuant to Section 13320 of the Government Code, submit a report to the Department of Finance and the Legislature as to the amount of those expenses awarded and paid during the fiscal year.

(i) This section shall be known and may be cited as the Carpenter-Katz Small Business Equal Access to Justice Act of 1981.

**Comment.** Section 1028.5 is amended to revise the reference to former Section 800 of the Government Code, which has been recodified in the Code of Civil Procedure.

## General Law

### **Code Civ. Proc. § 1089.5 (amended). Answer to petition for writ of mandate**

1089.5. Where a petition for writ of mandate is filed in the trial court pursuant to Section 1088.5, and where a record of the proceedings to be reviewed has been filed with the petition or where no record of a proceeding is required, the respondent shall answer or otherwise respond within 30 days after service of the

petition. However, where a record of the proceeding to be reviewed has been requested pursuant to ~~Section 11523 of the Government Code, or otherwise,~~ and has not been filed with the petition, the party upon whom the petition has been served, including any real party in interest, shall answer or otherwise respond within 30 days following receipt of a copy of the record.

**Comment.** Section 1089.5 is amended to delete the reference to Section 11523 of the Government Code, which has been repealed. For formal adjudication under the Administrative Procedure Act, the record is requested pursuant to Section 1123.830, but Section 1089.5 does not apply to judicial review proceedings under Sections 1120-1123.950. See Section 1123.710 (Part 2 applies, but not Part 3).

### Public Entities (part 1)

#### **Code Civ. Proc. § 1245.255 (amended). Judicial review; resolution of necessity**

1245.255. (a) A person having an interest in the property described in a resolution of necessity adopted by the governing body of the public entity pursuant to this article may obtain judicial review of the validity of the resolution:

(1) Before the commencement of the eminent domain proceeding, by petition for a ~~writ of mandate pursuant to Section 1085~~ judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The court having jurisdiction of the ~~writ of mandate action review proceeding,~~ upon motion of any party, shall order the ~~writ of mandate action review proceeding~~ dismissed without prejudice upon commencement of the eminent domain proceeding unless the court determines that dismissal will not be in the interest of justice.

(2) After the commencement of the eminent domain proceeding, by objection to the right to take pursuant to this title.

(b) A resolution of necessity does not have the effect prescribed in Section 1245.250 to the extent that its adoption or contents were influenced or affected by gross abuse of discretion by the governing body.

(c) Nothing in this section precludes a public entity from rescinding a resolution of necessity and adopting a new resolution as to the same property subject, after the commencement of an eminent domain proceeding, to the same consequences as a conditional dismissal of the proceeding under Section 1260.120.

**Comment.** Section 1245.255 is amended to change the former reference to a writ of mandate to a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

### School District Governing Boards

#### **Educ. Code § 35145 (amended). Public meetings**

35145. All meetings of the governing board of any school district shall be open to the public and shall be conducted in accordance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. All actions

authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:

(a) Minutes shall be taken at all of those meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.

(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may ~~commence an action by mandamus or injunction pursuant to~~ petition for review under Section 54960.1 of the Government Code for the purpose of obtaining a judicial determination that any action taken by the governing board in violation of this subdivision or Section 35144 is null and void.

**Comment.** Section 35145 is amended to delete the reference to mandamus or injunction. See Gov't Code § 54960.1 (petition for review).

### California Student Loan Authority

#### **Educ. Code § 69932 (amended). Enforcement of security**

69932. Any holder of revenue bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee or trustees under any indenture or trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such indenture or trust agreement securing, ~~such~~ the bonds, may, either at law or in equity, by suit, action, ~~mandamus~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under ~~such~~ the resolution or indenture or trust agreement, and may enforce and compel the performance of all duties required by this article or by ~~such~~ the resolution, indenture or trust agreement to be performed by the authority or by any officer, employee or agent thereof.

**Comment.** Section 69932 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Community College District Governing Boards

#### **Educ. Code § 72121 (amended). Public meetings**

72121. Except as provided in Sections 54957 and 54957.6 of the Government Code and in Section 72122 of, and subdivision (c) of Section 48914 of, this code, all meetings of the governing board of any community college district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:

(a) Minutes shall be taken at all of those meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.

(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may ~~commence an action by mandamus or injunction pursuant to~~ petition for review under Section 54960.1 of the Government Code for the purpose of obtaining a judicial determination that any action taken by the governing board in violation of this subdivision or subdivision (b) of Section 72129 is null and void.

**Comment.** Section 72125 is amended to delete the reference to mandamus or injunction. See Gov't Code § 54960.1 (petition for review).

**Educ. Code § 81960 (amended). Proceeding to compel performance of duties**

81960. The holder of any bond issued pursuant to this chapter may by ~~mandamus or other appropriate proceeding~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure require and compel the performance of any of the duties imposed upon the board or upon any official or employee or assumed by any thereof, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of any project, or the collection, deposit, investment, application, and disbursement of rents, rates, charges, fees, and all other revenues derived from the operation and use of any project or in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds under this chapter. The enumeration of ~~such~~ these rights and remedies do not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this chapter.

**Comment.** Section 81960 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Educ. Code § 87611 (amended). Judicial review**

87611. A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure.

**Comment.** Section 87611 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Trustees of California State University

**Educ. Code § 90072 (amended). Judicial review**

90072. The holder of any bond or note issued pursuant to this article may by ~~mandamus or other appropriate proceeding~~ petition for judicial review under Title

2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure require and compel the performance of any of the duties imposed upon the board or upon any official or employee or assumed by any thereof, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of any project, or the collection, deposit, investment, application and disbursement of rents, rates, charges, fees and all other revenues derived from the operation and use of any project or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds and notes under this article. The enumeration of ~~such~~ these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds and notes issued pursuant to this article.

**Comment.** Section 90072 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Regents of the University of California

#### **Educ. Code § 92491 (amended). Bondholder's power to secure performance**

92491. Except as provided otherwise in any indenture, the holder of any bond issued pursuant to this chapter may, by ~~mandamus or other appropriate proceeding~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the regents or upon any official or employee or assumed by the regents or any official or employee, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of any project, or the collection, deposit, investment, application, and disbursement of rents, rates, charges, fees, and all other revenues derived from the operation and use of any project or in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds pursuant to this chapter. The enumeration of ~~such~~ these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this chapter.

**Comment.** Section 92491 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### California Educational Facilities Authority

#### **Educ. Code § 94148 (amended). Restrictions**

94148. Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, ~~such~~ the bonds, may, either at law or in equity, by suit, action, ~~mandamus~~ , petition for

judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such the resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such the resolution or trust agreement to be performed by the authority or by any officer, employee or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges herein authorized and required by the provisions of such the resolution or trust agreement to be fixed, established, and collected.

**Comment.** Section 94148 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Council for Private Postsecondary and Vocational Education

#### **Educ. Code § 94323 (amended). Procedure for notice and hearing**

94323. (a) This section establishes the procedure for notice and hearing required under this chapter and, except as provided in Sections 94319.12 and 94322, may be used in lieu of other notice or hearing requirements provided in this chapter.

(b) If notice of administrative action is required by this chapter, the council shall serve notice stating the following:

(1) The action, including the penalties and administrative sanctions sought.

(2) The grounds for the action with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action is based.

(3) The right to a hearing and the time period within which the party subject to the notice may request a hearing in writing. The time period shall not be less than 15 days after service of the notice unless a longer period is provided by statute.

(4) The right to be present at the hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

(5) The administrative action set forth in the notice will be taken and shall become final if the party subject to the notice does not request a hearing in writing within the time period expressed in the notice.

(c) If a party subject to a notice provided pursuant to subdivision (b) requests a hearing in writing within 10 days of receiving the notice, the council shall schedule a hearing. The hearing shall be held in a location determined pursuant to Section 11508 of the Government Code. The council shall serve reasonable notice of the time and place for the hearing at least 10 days before the hearing. The council may continue the date of the hearing upon a showing of good cause.

(d)(1) Any party, including the council, may submit a written request to any other party before the hearing to obtain the names and addresses of any person who has personal knowledge, or who the party receiving the request claims to

have personal knowledge, of any of the transactions, occurrences, violations, or other matters that are the bases of the administrative action. In addition, the requesting party shall have the right to inspect and copy any written statement made by that person and any writing, as defined by Section 250 of the Evidence Code, or thing that is in the custody, or under the control, of the party receiving the request and that is relevant and not privileged. This subdivision shall constitute the exclusive method for prehearing discovery. However, nothing herein shall affect the council's authority, at any time, to investigate, inspect, monitor, or obtain and copy information under any provision of this chapter.

(2) The written request described in paragraph (1) shall be made before the hearing and within 30 days of the service of the notice described in subdivision (b). Each recipient of a request shall comply with the request within 15 days of its service by providing the names and addresses requested and by producing at a reasonable time at the council's office or another mutually agreed reasonable place the requested writings and things. The council may extend the time for response upon a showing of good cause.

(3) Except as provided in this paragraph, no party may introduce the testimony or statement of any person or any writing or thing into evidence at the hearing if that party failed to provide the name and address of the person or to produce the writing or thing for inspection and copying as provided by this subdivision. A party may introduce the testimony, statement, writing, or thing that was not identified or produced as required herein only if there is no objection or if the party establishes that the person, writing, or thing was unknown at the time when the response was made to the written request, the party could not have informed other parties within a reasonable time after learning of the existence of the person, writing, or thing, and no party would be prejudiced by the introduction of the evidence.

(e) Before the hearing has commenced, the council shall issue subpoenas at the written request of any party for the attendance of witnesses or the production of documents or other things in the custody or under the control of the person subject to the subpoena. Subpoenas issued pursuant to this section shall be subject to Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(f)(1) The council shall designate an impartial hearing officer to conduct the hearing. The hearing officer may administer oaths and affirmations, regulate the course of the hearing, question witnesses, and otherwise investigate the issues, take official notice according to the procedure provided in Division 4 (commencing with Section 450) of the Evidence Code of any technical or educational matter in the council's special field of expertise and of any matter that may be judicially noticed, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, direct any party to appear and confer to consider the simplification of issues by consent, and prepare a statement of decision.

(2) In addition to the sanctions provided in Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the council finds that any party willfully violated, or caused the violation of, that article, the council shall enter that party's default and impose the administrative sanction set forth in the notice provided pursuant to subdivision (b).

(g)(1) Each party at the hearing shall be afforded an opportunity to present evidence, respond to evidence presented by other parties, cross-examine, and present written argument or, if permitted by the hearing officer, oral argument on the issues involved in the hearing. The council may call any party as a witness who may be examined as if under cross-examination.

(2) Each party may appear through its representative or through legal counsel.

(3) The technical rules relating to evidence and witnesses shall not apply. However, only relevant evidence is admissible.

(4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who is not proficient in English shall provide, at the proponent's cost, an interpreter proficient in English and the language in which the witness will testify.

(5) The hearing shall be recorded by tape recording or other phonographic means unless all parties agree to another method of recording the proceedings.

(6)(A) At any time 10 or more days before the hearing, any party may serve on the other parties a copy of any declaration which the party proposes to introduce in evidence.

(B) The declaration shall be accompanied by a notice indicating the date of service of the notice and stating that the declarations will be offered into evidence, the declarants will not be called as witnesses, and there will be no right of cross-examination unless the party receiving the notice requests the right to cross-examine, in writing, within seven days of the service of the declarations and notice.

(C) If no request for cross-examination is served within seven days of the service of the declarations and notice described in subparagraph (B), the right to cross-examination is deemed waived and the declaration shall have the same effect as if the declarant testified orally. Notwithstanding this paragraph, a declaration may be admitted as hearsay evidence without cross-examination.

(7) Disposition of any issues involved in the hearing may be made by stipulation or settlement.

(8) If a party fails to appear at a hearing, that party's default shall be taken and the party shall be deemed to have waived the hearing and agreed to the administrative action and the grounds for that action described in the notice given pursuant to subdivision (b). The council shall serve the party with an order of default including the administrative action ordered. The order shall be effective upon service or at any other time designated by the council. The council may

relieve a party from an order of default if the party applies for relief within 15 days after the service of an order of default and establishes good cause for relief. An application for relief from default shall not stay the effective date of the order unless expressly provided by the council.

(h)(1) At any time before the matter is submitted for decision, the council may amend the notice provided pursuant to subdivision (b) to set forth any further grounds for the originally noticed administrative action or any additional administrative action and the grounds therefor. The statement of the further grounds for the originally noticed administrative action, or of the grounds for any additional administrative action, shall be made with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action or additional action is based. The amended notice shall be served on all parties. All parties affected by the amended notice shall be given reasonable opportunity to respond to the amended notice as provided in this section.

(2) The council may amend the notice after the case is submitted for decision. The council shall serve each party with notice of the intended amendment and shall provide the party with an opportunity to show that the party will be prejudiced by the amendment unless the case is reopened to permit the party to introduce additional evidence. If prejudice is shown, the council shall reopen the case to permit the introduction of additional evidence.

(i)(1) Within 30 days after the conclusion of the hearing or at another time established by the council, the hearing officer shall submit a written statement of decision setting forth a recommendation for a final decision. The written statement of decision shall be made as provided in Section 11425.50 of the Government Code. The council shall serve the hearing officer's statement of decision on each party and its counsel within 10 days of its submission by the hearing officer.

(2) The council shall make the final decision which shall be based exclusively on evidence introduced at the hearing. The final decision shall be supported by substantial evidence in the record. The council also shall issue a statement of decision as provided in Section 11425.50 of the Government Code. The council shall issue an order based on its decision which shall be effective upon service or at any other time designated by the council. The council shall serve a copy of the final decision and order, within 10 days of their issuance, on each party and its counsel.

(3) The council may hold a closed session to deliberate on a decision to be reached based upon evidence introduced at the hearing.

(4) The council shall serve a certified copy of the complete record of the hearing, or any part thereof designated by a party, within 30 days after receiving the party's written request and payment of the cost of preparing the requested portions of the record. The complete record shall include all notices and orders issued by the council, a transcript of the hearing, the exhibits admitted or rejected,

the written evidence and any other papers in the case, the hearing officer's statement of decision, and the final decision and order.

(j) The council shall serve all notices and other documents that are required to be served by this section on each party by personal delivery, by certified mail, return receipt requested, or by any other means designated by the council.

(k)(1) Any party aggrieved by the council's final decision and order may seek judicial review by filing a petition for a writ of mandate pursuant to ~~Section 1085~~ review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within 30 days of the issuance of the final decision and order. If review is not sought within that period, the party's right to review shall be deemed waived.

~~(2) The aggrieved party shall present the complete record of the hearing or all portions of the record necessary for the court's review of the council's final decision and order. The court shall deny the petition for a writ of mandate if the record submitted by the party is incomplete. The court shall not consider any matter not contained in the record. The factual bases supporting the final decision set forth in the council's statement of decision shall be conclusive if supported by substantial evidence on the record considered as a whole.~~

~~(3) The final order shall not be stayed or enjoined during review except upon the court's grant of an order on a party's application under Section 1123.720 of the Code of Civil Procedure after due notice to the council and the Attorney General. The order shall not be granted only if unless the party establishes the substantial likelihood that it will prevail on the merits and posts a bond sufficient to protect fully the interests of the students, the council, and the Student Tuition Recovery Fund, from any loss.~~

(l) The council may adopt regulations establishing alternative means of providing notice and an opportunity to be heard in circumstances in which a full hearing is not required by law.

(m) For purposes of this section, "good cause" shall require sufficient ground or reason for the determination to be made by the council.

**Comment.** Subdivision (k)(1) of Section 94323 is amended to replace the former reference to a writ of mandate with a reference to the provisions for judicial review of Code of Civil Procedure Sections 1120-1123.950.

Former subdivision (k)(2) is deleted. The first sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record). The second sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Section 1123.470 (burden of demonstrating invalidity of agency action on party asserting it). The third sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Section 1123.810 (record exclusive basis for judicial review). The fourth sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

Former subdivision (k)(3) is redesignated as subdivision (k)(2) and amended to delete the requirement that the party seeking a stay must establish a substantial likelihood that it will prevail on the merits. This is superseded by Code of Civil Procedure Section 1123.720(b) (petitioner likely to prevail on the merits, without a stay petitioner will suffer irreparable injury, and stay will not substantially harm others or threaten public health, safety, or welfare).

**Educ. Code § 94933 (amended). (Operative July 1, 1997, until January 1, 1998) Notice and hearing; judicial review**

94933. (a) This section establishes the procedure for notice and hearing required under this chapter and, except as provided in Sections 94913 and 94932, may be used in lieu of other notice or hearing requirements provided in this chapter.

(b) If notice of administrative action is required by this chapter, the council shall serve notice stating the following:

(1) The action, including the penalties and administrative sanctions sought.

(2) The grounds for the action with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action is based.

(3) The right to a hearing and the time period within which the party subject to the notice may request a hearing in writing. The time period shall not be less than 15 days after service of the notice unless a longer period is provided by statute.

(4) The right to be present at the hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

(5) The administrative action set forth in the notice will be taken and shall become final if the party subject to the notice does not request a hearing in writing within the time period expressed in the notice.

(c) If a party subject to a notice provided pursuant to subdivision (b) requests a hearing in writing within 10 days of receiving the notice, the council shall schedule a hearing. The hearing shall be held in a location determined pursuant to Section 11508 of the Government Code. The council shall serve reasonable notice of the time and place for the hearing at least 10 days before the hearing. The council may continue the date of the hearing upon a showing of good cause.

(d)(1) Any party, including the council, may submit a written request to any other party before the hearing to obtain the names and addresses of any person who has personal knowledge, or who the party receiving the request claims to have personal knowledge, of any of the transactions, occurrences, violations, or other matters that are the bases of the administrative action. In addition, the requesting party shall have the right to inspect and copy any written statement made by that person and any writing, as defined by Section 250 of the Evidence Code, or thing that is in the custody, or under the control, of the party receiving the request and that is relevant and not privileged. This subdivision shall constitute the exclusive method for prehearing discovery. However, nothing in this paragraph shall affect the council's authority, at any time, to investigate, inspect, monitor, or obtain and copy information under any provision of this chapter.

(2) The written request described in paragraph (1) shall be made before the hearing and within 30 days of the service of the notice described in subdivision (b). Each recipient of a request shall comply with the request within 15 days of its service by providing the names and addresses requested and by producing at a

reasonable time at the council's office, or another mutually agreed reasonable place, the requested writings and things. The council may extend the time for response upon a showing of good cause.

(3) Except as provided in this paragraph, no party may introduce the testimony or statement of any person or any writing or thing into evidence at the hearing if that party failed to provide the name and address of the person or to produce the writing or thing for inspection and copying as provided by this subdivision. A party may introduce the testimony, statement, writing, or thing that was not identified or produced as required herein only if there is no objection or if the party establishes that the person, writing, or thing was unknown at the time when the response was made to the written request, the party could not have informed other parties within a reasonable time after learning of the existence of the person, writing, or thing, and no party would be prejudiced by the introduction of the evidence.

(e) Before the hearing has commenced, the council shall issue subpoenas at the written request of any party for the attendance of witnesses or the production of documents or other things in the custody or under the control of the person subject to the subpoena. Subpoenas issued pursuant to this section shall be subject to Article 11 (commencing with Section 11450.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(f)(1) The council shall designate an impartial hearing officer to conduct the hearing. The hearing officer may administer oaths and affirmations, regulate the course of the hearing, question witnesses, and otherwise investigate the issues, take official notice according to the procedure provided in Division 4 (commencing with Section 450) of the Evidence Code of any technical or educational matter in the council's special field of expertise and of any matter that may be judicially noticed, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, direct any party to appear and confer to consider the simplification of issues by consent, and prepare a statement of decision.

(2) In addition to the sanctions provided in Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the council finds that any party willfully violated, or caused the violation of, that article, the council shall enter that party's default and impose the administrative sanction set forth in the notice provided pursuant to subdivision (b).

(g)(1) Each party at the hearing shall be afforded an opportunity to present evidence, respond to evidence presented by other parties, cross-examine, and present written argument or, if permitted by the hearing officer, oral argument on the issues involved in the hearing. The council may call any party as a witness who may be examined as if under cross-examination.

(2) Each party may appear through its representative or through legal counsel.

(3) The technical rules relating to evidence and witnesses shall not apply. However, only relevant evidence is admissible.

(4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who is not proficient in English shall provide, at the proponent's cost, an interpreter proficient in English and the language in which the witness will testify.

(5) The hearing shall be recorded by tape recording or other phonographic means unless all parties agree to another method of recording the proceedings.

(6)(A) At any time 10 or more days before the hearing, any party may serve on the other parties a copy of any declaration which the party proposes to introduce in evidence.

(B) The declaration shall be accompanied by a notice indicating the date of service of the notice and stating that the declarations will be offered into evidence, the declarants will not be called as witnesses, and there will be no right of cross-examination unless the party receiving the notice requests the right to cross-examine, in writing, within seven days of the service of the declarations and notice.

(C) If no request for cross-examination is served within seven days of the service of the declarations and notice described in subparagraph (B), the right to cross-examination is deemed waived and the declaration shall have the same effect as if the declarant testified orally. Notwithstanding this paragraph, a declaration may be admitted as hearsay evidence without cross-examination.

(7) Disposition of any issues involved in the hearing may be made by stipulation or settlement.

(8) If a party fails to appear at a hearing, that party's default shall be taken and the party shall be deemed to have waived the hearing and agreed to the administrative action and the grounds for that action described in the notice given pursuant to subdivision (b). The council shall serve the party with an order of default including the administrative action ordered. The order shall be effective upon service or at any other time designated by the council. The council may relieve a party from an order of default if the party applies for relief within 15 days after the service of an order of default and establishes good cause for relief. An application for relief from default shall not stay the effective date of the order unless expressly provided by the council.

(h)(1) At any time before the matter is submitted for decision, the council may amend the notice provided pursuant to subdivision (b) to set forth any further grounds for the originally noticed administrative action or any additional administrative action and the grounds therefor. The statement of the further grounds for the originally noticed administrative action, or of the grounds for any additional administrative action, shall be made with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action or additional action is based. The amended notice shall be served on all

parties. All parties affected by the amended notice shall be given reasonable opportunity to respond to the amended notice as provided in this section.

(2) The council may amend the notice after the case is submitted for decision. The council shall serve each party with notice of the intended amendment and shall provide the party with an opportunity to show that the party will be prejudiced by the amendment unless the case is reopened to permit the party to introduce additional evidence. If prejudice is shown, the council shall reopen the case to permit the introduction of additional evidence.

(i)(1) Within 30 days after the conclusion of the hearing or at another time established by the council, the hearing officer shall submit a written statement of decision setting forth a recommendation for a final decision. The written statement of decision shall be made as provided in Section 11425.50 of the Government Code. The council shall serve the hearing officer's statement of decision on each party and its counsel within 10 days of its submission by the hearing officer.

(2) The council shall make the final decision which shall be based exclusively on evidence introduced at the hearing. The final decision shall be supported by substantial evidence in the record. The council also shall issue a statement of decision as provided in Section 11425.50 of the Government Code. The council shall issue an order based on its decision which shall be effective upon service or at any other time designated by the council. The council shall serve a copy of the final decision and order, within 10 days of their issuance, on each party and its counsel.

(3) The council may hold a closed session to deliberate on a decision to be reached based upon evidence introduced at the hearing.

(4) The council shall serve a certified copy of the complete record of the hearing, or any part thereof designated by a party, within 30 days after receiving the party's written request and payment of the cost of preparing the requested portions of the record. The complete record shall include all notices and orders issued by the council, a transcript of the hearing, the exhibits admitted or rejected, the written evidence and any other papers in the case, the hearing officer's statement of decision, and the final decision and order.

(j) The council shall serve all notices and other documents that are required to be served by this section on each party by personal delivery, by certified mail, return receipt requested, or by any other means designated by the council.

(k)(1) Any party aggrieved by the council's final decision and order may seek judicial review ~~by filing a petition for a writ of mandate pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within 30 days of the issuance of the final decision and order.~~ If review is not sought within that period the time provided in Section 1123.640 of the Code of Civil Procedure, the party's right to review shall be deemed waived.

(2) ~~The aggrieved party shall present the complete record of the hearing or all portions of the record necessary for the court's review of the council's final~~

~~decision and order. The court shall deny the petition for a writ of mandate if the record submitted by the party is incomplete. The court shall not consider any matter not contained in the record. The factual bases supporting the final decision set forth in the council's statement of decision shall be conclusive if supported by substantial evidence on the record considered as a whole.~~

(3) The final order shall not be stayed or enjoined during review except upon the court's grant of an order on a party's application under Section 1123.720 of the Code of Civil Procedure after due notice to the council and the Attorney General. The order shall not be granted ~~only if~~ unless the party establishes the substantial likelihood that it will prevail on the merits and posts a bond sufficient to protect fully the interests of the students, the council, and the Student Tuition Recovery Fund, from any loss.

(l) The council may adopt regulations establishing alternative means of providing notice and an opportunity to be heard in circumstances in which a full hearing is not required by law.

(m) For purposes of this section, "good cause" shall require sufficient ground or reason for the determination to be made by the council.

(n) This section shall become operative on July 1, 1997, and as of January 1, 1998, is repealed, unless a later enacted statute deletes or extends the date of the repeal of this chapter, in which case this section shall be repealed on the same date this chapter is repealed.

**Comment.** Section 94933 (added by Chapter 62 of the Statutes of 1996) is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former provision in subdivision (k)(3) that a stay shall not be granted without a substantial likelihood the party will prevail on the merits is continued in substance in Code of Civil Procedure Section 1123.720(b)(1).

## County Elections Officials

### **Elec. Code § 9190 (amended). Public examination; amendment or deletion of materials**

9190. (a) Not less than 10 calendar days before the county elections official submits the official election materials referred to in Sections 9119, 9120, 9160, 9162, and 9167 for printing, the county elections official shall make a copy of the materials available for public examination in the county elections official's office. Any person may obtain a copy of the materials from the county elections official for use outside of the county elections official's office. The county elections official may charge a fee to any person obtaining a copy of the material. The fee shall not exceed the actual cost incurred by the county elections official in providing the copy.

(b) During the 10-calendar-day examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the county elections official, himself or herself, may ~~seek a writ of mandate or an injunction petition for judicial review under Title 2 (commencing with Section 1120) of Part~~

3 of the Code of Civil Procedure, requiring any or all of the materials to be amended or deleted. ~~A peremptory writ of mandate or an injunction shall be issued~~ The court may grant relief only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with this chapter, and that ~~issuance of the writ or injunction~~ the relief granted will not substantially interfere with the printing or distribution of official election materials as provided by law. The county elections official shall be named as respondent and the person or official who authored the material in question shall be named as real parties in interest. In the case of the county elections official ~~bringing the mandamus or injunctive action~~ petitioning for review, the board of supervisors of the county shall be named as the respondent and the person or official who authored the material in question shall be named as the real party in interest.

**Comment.** Section 9190 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Elec. Code § 9295 (amended). Public examination**

9295. (a) Not less than 10 calendar days before the elections official submits the official election materials referred to in Sections 9219, 9220, 9223, 9280, 9281, 9282, and 9285 for printing, the elections official shall make a copy of the material available for public examination in the elections official's office. Any person may obtain a copy of the materials from the elections official for use outside of the election official's office. The elections official may charge a fee to any person obtaining a copy of the material. The fee shall not exceed the actual cost incurred by the elections official in providing the copy.

(b) During the 10-calendar-day examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may ~~seek a writ of mandate or an injunction~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, requiring any or all of the materials to be amended or deleted. ~~A peremptory writ of mandate or an injunction shall be issued~~ The court may grant relief only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that ~~issuance of the writ or injunction~~ the relief granted will not substantially interfere with the printing or distribution of official election materials as provided by law. The elections official shall be named as respondent, and the person or official who authored the material in question shall be named as real parties in interest. In the case of the elections official ~~bringing the mandamus or injunctive action~~ petitioning for review, the board of supervisors of the county shall be named as the respondent and the person or official who authored the material in question shall be named as the real party in interest.

**Comment.** Section 9295 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Elec. Code § 13313 (amended). Public examination**

13313. (a) Not less than 10 calendar days before the elections official submits the official voter's pamphlet referred to in Section 13307 for printing, the elections official shall make a copy of the voter's pamphlet available for public examination in the elections official's office. Any person may obtain a copy of the voter's pamphlet from the elections official for use outside of the elections official's office. The elections official may charge a fee to any person obtaining a copy of the material, and the fee shall not exceed the actual cost incurred by the elections official in providing the copy.

(b)(1) During the 10-calendar-day examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek ~~a writ of mandate or an injunction~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, requiring any or all of the material in the voter's pamphlet to be amended or deleted. A ~~peremptory writ of mandate or an injunction~~ court order shall issue only upon clear and convincing proof of both of the following: (A) that the material in question is false, misleading, or inconsistent with the requirements of this chapter; and (B) that issuance of the ~~writ or injunction~~ order will not substantially interfere with the printing or distribution of official election materials as provided by law.

(2) With regard to ~~a writ of mandate or injunction~~ review sought pursuant to this subdivision, the elections official shall be named as respondent and the candidate who authored the material in question shall be named as the real party in interest. In the case of the elections official bringing the ~~mandamus or injunctive action~~ proceeding for review pursuant to this subdivision, the board of supervisors of the county shall be named as the respondent and the candidate who authored the material in question shall be named as the real party in interest.

**Comment.** Section 13313 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Savings and Loan Commissioner

**Fin. Code § 8055 (amended). Judicial review**

8055. Every final decision of the commissioner is subject to judicial review ~~in accordance with law. An action or proceeding for judicial review pursuant to this section shall be commenced within 60 days after issuance of the final decision~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 8055 is amended to refer to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the former second sentence. The former second sentence is superseded by Code of Civil Procedure Section 1123.640. Under Section 1123.640, the time for filing a petition for review is 30 days after the decision is effective.

## Fish and Game Commission

### **Fish & Game Code § 2076 (amended). Judicial review**

2076. Any finding pursuant to this section is subject to judicial review under Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 2076 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Department of Food and Agriculture (part 2)

### **Food & Agric. Code § 5311 (amended). Civil penalty**

5311. (a) In lieu of any civil action pursuant to Section 5310, except as provided in Article 5 (commencing with Section 5781) of Chapter 8, the secretary or the commissioner may levy a civil penalty against a person violating this division or any regulation adopted pursuant to this division in an amount not to exceed two thousand five hundred dollars (\$2,500) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

(c) A Judicial review of the decision of the secretary to impose a penalty may be sought by the person against whom the penalty was levied ~~within 30 days of the date of the decision pursuant to Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(d) The person against whom a civil penalty is levied by a commissioner may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party, at the time of filing the appeal or within 10 days thereafter, may present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the penalty levied, or reverse the decision. A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner who levied the penalty, if this is the case.

(8) ~~Review~~ Judicial review of the decision of the secretary may be sought by the appellant ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure.

(e) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

**Comment.** Section 5311 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (c) to the time within which review must be commenced is superseded by Code of Civil Procedure Section 1123.640.

### State Agencies Responsible for Roadside Vegetation Control

#### **Food & Agric. Code § 5509 (amended). Judicial review**

5509. Any property owner affected by the decision of the agency made pursuant to this chapter may ~~bring an action for writ of mandamus challenging the decision pursuant to Section 1085 of the Code of Civil Procedure. A property owner may also request a court to issue an injunction or order any other action to restrain any violation of this chapter.~~ challenge the decision by a petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 5509 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former second sentence of Section 5509 authorizing injunctive relief is continued in substance in Code of Civil Procedure Section 1123.730 (relief permitted).

### Department of Food and Agriculture (part 3)

#### **Food & Agric. Code § 11512.5 (amended). Suspension; appeal**

11512.5. (a) The commissioner may refuse, suspend, or revoke a county registration or permit pursuant to Section 11735, 11924, 12035, or 14008. Before that action is taken, the party whose registration or permit request is to be refused, suspended, or revoked, the registered party, or the permittee shall be given a written notice of the proposed action, including the basis for the action, and shall have the right to request a hearing before the commissioner within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person against whom the

action is proposed shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to present any evidence or argument on his or her own behalf. If a hearing is not requested in a timely manner, the commissioner may take the action proposed without a hearing. If the party whose registration or permit is refused, suspended, or revoked requested and appeared at a hearing, he or she may appeal to the director within 10 days of mailing or personal service of the commissioner's decision. The following procedure shall apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal. The commissioner's decision shall be stayed pending the director's decision, except as provided in subdivision (b). The party whose registration or permit has been refused shall remain unregistered or unpermitted pending the outcome of the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, make written application to the director to present new evidence, stating the materiality of the evidence, and the reasons why the evidence was not introduced at the hearing before the commissioner. The evidence may be allowed in the discretion of the director. Thereafter, 10 days shall be given the parties to rebut the evidence and make written application to the director to present oral or written argument. An application to present written argument shall be granted, but the director shall have discretion to grant oral argument or to grant both oral and written argument. If an application to present oral argument is granted, written notice of the time and place for oral argument shall be given each party at least 10 days before the date set therefor. The time may be shortened by mutual agreement of the parties. If written argument is granted, all parties shall be notified thereof and shall simultaneously file briefs within the time specified by the director.

(3) The director shall decide the appeal upon the evidence received at the hearing before the commissioner, oral or written argument, and new or additional evidence as the director may have admitted.

(4) On an appeal pursuant to this section, the director may sustain, reverse, or modify the decision of the commissioner. A copy of the director's decision shall be delivered or mailed to each party. This shall not be a limitation on the director's authority to institute proceedings against any state license or other indicant of permission issued pursuant to this division or pursuant to Division 7 (commencing with Section 12501).

(5) A Judicial review of a decision of the director may be sought by the appellant ~~within 30 days of the date of the decision pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(b) Notwithstanding any other provision of law, whenever the commissioner has reason to believe that continuance of a registration or permit specified in subdivision (a) endangers public health or safety or the environment, the commissioner, without prior notice, may immediately suspend the registration or permit. The commissioner shall inform the party registered or the permittee, in writing, of the suspension as soon as practical, specifying the reasons for the immediate suspension. When acting pursuant to this subdivision, the commissioner, within seven days of informing the permittee or registered person of the immediate suspension, shall issue a written notice of proposed action as specified in subdivision (a). Subdivision (a) applies to the notice of proposed action, hearing, and appeal, except as otherwise provided in this subdivision. If a hearing is requested, it shall be held not later than seven days from the date the request for the hearing is received by the commissioner, unless the person requesting the hearing agrees to a later hearing date. The commissioner's decision shall be issued within 10 days after the conclusion of the hearing. If the party against whom action was taken requested and appeared at a hearing, he or she may appeal the commissioner's decision, issued following the hearing, to the director as provided in subdivision (a). The director may stay the commissioner's decision pending the director's decision.

**Comment.** Section 11512.5, *as amended by* Chapter 435 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a)(5) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 12648 (amended). Declaration of crop as nuisance; judicial review**

12648. (a) Notwithstanding any other provision of this code, a site within this state that has been treated with, or a plant, crop, or commodity, whether grown in this state or elsewhere, that has been treated with, or grown on a site treated with, a pesticide that is not registered for use on that plant, crop, commodity, or site is a public nuisance and may be seized by order of the director.

(b) The unlawful treatment described in subdivision (a) creates, in favor of the director, rebuttable presumptions affecting the burden of producing evidence pursuant to Section 604 of the Evidence Code as follows:

(1) That the treated plant, crop, commodity, or site, or any plant, crop, or commodity grown on the treated site, presents a hazard to human health or the environment.

(2) That the pesticide was used to gain an unfair business advantage for the owner or person in possession or control of the plant, crop, commodity, or site.

(c) The director shall provide notice to the owner or person in possession or control of the plant, crop, commodity, or site prior to seizure, unless the director has reason to believe that prior notice would result in the director's loss of control of that plant, crop, commodity, or site, in which case, notice shall be given as soon as practical, but, in any event within five days of the seizure. The notice shall specify the grounds for the seizure and provide that the owner or person in

possession or control, within 15 days of receipt of the notice, may request a hearing before the director to contest the seizure or rebut the presumptions specified in subdivision (b). The hearing shall be held not later than five days from the date the owner or person's request is received by the director. The director shall render a written decision within five days of the hearing or within five days of the expiration of the time to request a hearing if no hearing was requested. The decision shall either release the plant, crop, commodity, or site from seizure or make any of the following orders:

- (1) Destruction of the plant, crop, or commodity.
  - (2) Prohibition of harvest or sale of the plant, crop, or commodity grown on the site.
  - (3) Prohibition of the use or planting of the site, which may be for the period of any plant back time specified for the economic poison used on the site.
  - (4) Any other appropriate action or measure.
- (d) ~~Review~~ Judicial review of the decision of the director may be sought by the owner or person in possession or control of the plant, crop, commodity, or site pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 12648, *as amended* by Chapter 361 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 12999.4 (amended). Civil penalty**

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Sections 12115, 12115.1, 12115.5, 12115.6, 12671, 12847, 12993, Article 4.5 (commencing with Section 12841), or Article 4.6 (commencing with Section 12848) of Chapter 2 of not more than five thousand dollars (\$5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the director's evidence and a right to present evidence on his or her own behalf.

(c) ~~Review~~ Judicial review of the decision of the director may be sought by the person against whom the penalty was levied ~~within 30 days of the date of the decision pursuant to Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a ~~petition for a writ of administrative mandamus~~ relief in a proceeding for judicial review, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of

any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Food and Agriculture Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

**Comment.** Section 12999.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision requiring review to be sought within 30 days after the date of the decision is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 12999.5 (amended). Civil penalty**

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (b). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review ~~Judicial review~~ of a decision of the director may be sought by the appellant ~~within 30 days of the date of the decision pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(d) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(e) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that ~~denies a petition for a writ of administrative mandamus relief in a proceeding for judicial review,~~ with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

**Comment.** Section 12999.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (c)(9) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 14009 (amended). Review of action involving permit; judicial review**

14009. (a) Any interested person may request the commissioner to review his or her action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material. The commissioner shall review the request and issue a written decision in response to the request to review within 10 days of receipt of the request, or as soon as practicable. The commissioner may affirm, modify, or cancel the permit action reviewed. A directly affected person may thereafter appeal to the director to review the commissioner's action.

(b) The commissioner and director shall conduct each review in an expeditious manner so that needed pest control measures are not adversely affected.

(c) Each request for review shall be submitted in writing to the commissioner by the person requesting the review and shall include all of the following:

(1) The location of persons, property, or areas that would be affected and the location of property to be treated.

(2) The name of the restricted material involved.

(3) The name and address of the person in charge of the property to be treated, if different from the person filing the request for review.

(4) Any other information that the person filing the request for review or the commissioner determines to be relevant.

(d) In an appeal of a commissioner's action to the director, the issues are limited to any of the following:

(1) Whether the proposed permit use is consistent with applicable pesticide label restrictions and applicable regulations.

(2) Whether the commissioner properly considered the provisions of Section 14006.5.

(3) Whether the commissioner abused his or her discretion in issuing, refusing, revoking, or conditioning the permit.

(e) The director shall act on these appeals within 10 days of receipt thereof or as soon thereafter as is practicable. The director may stay the operation of a permit until his or her review is complete.

(f)(1) Prior to conducting a public review, the director shall notify directly affected persons at least 72 hours in advance of the location and time of the public review.

(2) Before acting on an appeal, the director shall, in a specified location open to the public, review the information provided to him or her as specified in this section if requested to do so in writing by any interested person.

(3) The director may request additional testimony or other evidence specified in this section at the public review from interested persons.

(g) Judicial review of any decision by the director pursuant to this section shall be ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure. Review shall be limited to whether the proposed permit use is consistent with applicable pesticide label restrictions and regulations and whether the director abused his or her discretion.

**Comment.** Section 14009, *as amended* by Chapter 435 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 15071.5 (amended). Civil penalty**

15071.5. (a) In lieu of any other penalty provided by this chapter, the director may levy a civil penalty against a person who violates Section 15051, 15053, or 15054, in an amount not to exceed five hundred dollars (\$500) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation.

(c) Any person against whom a civil penalty is imposed pursuant to this section may appeal to the director within 10 days of the date of receiving notification of the penalty in accordance with the following procedure:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, submit written evidence and a written argument to the director.

(3) The director may authorize a person to present an oral argument on his or her behalf. The person shall submit a request to present an oral argument at the same time the written evidence or written arguments are submitted.

(4) If a request to present an oral argument is granted by the director, the director shall give written notice of the time and place for the oral argument not less than 10 days prior to the date set for oral argument. This time requirement may be altered by an agreement between the director and the appellant.

(5) The director shall decide the appeal on the basis of the oral or written arguments, briefs, and evidence presented to the director.

(6) The director shall render a written decision within 45 days of the date the appeal was received or within 15 days of the date of the oral argument, whichever date is later.

(7) On an appeal pursuant to this section, the director may sustain the decision, modify the amount of the penalty imposed, or reverse the decision. A copy of the director's decision shall be delivered or mailed to the appellant.

(8) The decision of the director may be reviewed ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure.

(d) Any funds recovered by the director pursuant to this section shall be deposited in a special account in the Department of Food and Agriculture Fund

and, notwithstanding Section 13340 of the Government Code, are continuously appropriated to cover costs related to the enforcement of this division.

**Comment.** Section 15071.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 18931 (amended). Administrative and judicial review**

18931. Upon the issuance of an order of the director pursuant to Section 18725, 18728, 18729, or 18730, the operator of the establishment may seek administrative review before the director by filing his a written request therefor within 10 days after issuance of the order. Proceedings for ~~such~~ administrative review, except as provided in this section, shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The decision of the director shall be subject to judicial review pursuant to ~~Section 11523 of the Government Code~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Any order of the director issued pursuant to Section 18725, 18728, 18729, or 18730, shall remain in force during ~~such~~ administrative and judicial review.

**Comment.** Section 18931 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 19447 (amended). Civil penalty**

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the secretary may levy a civil penalty against a person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed one thousand dollars (\$1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted an opportunity to be heard. This shall include the right to review evidence and a right to present evidence on his or her own behalf.

(c) Any person upon whom a civil penalty is levied may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal, or within 10 days thereafter, present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are made.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal, or within 15 days of the date of oral arguments. A copy of the secretary's decision shall be delivered or mailed to the appellant.

(7) The secretary may sustain the decision, modify the decision by reducing the amount of the penalty levied, or reverse the decision.

(8) A Judicial review of the decision of the secretary may be sought by the appellant pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(d) Any penalties levied by the secretary pursuant to this section shall be deposited in the General Fund.

**Comment.** Section 19447 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 21051.3 (amended). Civil penalty**

21051.3. (a) Any person who moves or transports any animal without inspection, as required by this chapter, is liable to the director for a civil penalty in the amount of the expenses incurred by the director to investigate and prosecute the violation and, if the violation involved the unlawful taking of animals, the expenses incurred by the director to recover and return the animal or animals to their owner.

(b) If the director finds that a violation of subdivision (a) has occurred, he or she shall calculate the amount of the civil penalty and make demand for payment within 30 days thereof. The respondent may deny liability in whole or in part, in which case the director shall set the matter for hearing before a hearing officer of the department or, at the director's discretion, pursuant to Section 11502 of the Government Code. The hearing procedure under this subdivision shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The respondent may petition for judicial review of the director's determination to assess a civil penalty pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure by ~~filing an action within 30 days of the date of service of the director's decision.~~

(d) The civil penalty in this section is in addition to any other civil or criminal penalties provided by law.

(e) Any funds collected pursuant to this section shall be paid into the Department of Food and Agriculture Fund.

**Comment.** Section 21051.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (c) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 21051.4 (amended). Civil penalty**

21051.4. (a) In addition to any other penalty provided by this chapter, the director may levy a civil penalty against any person who violates this chapter of an amount not to exceed one hundred dollars (\$100) for each violation.

(b) Before a civil penalty is levied, the person who is charged with a violation shall be provided a notice of the violation, shall have an opportunity to be heard, and shall have the right to review the evidence and to present evidence on his or her behalf.

(c) The decision of the director may be reviewed ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(d) The director shall deposit the funds collected pursuant to this section in the Department of Food and Agriculture Fund for expenditure as authorized by this division.

**Comment.** Section 21051.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 24007 (amended). Civil penalty; judicial review**

24007. (a) In addition to any other penalty or fine prescribed by law, a trainer or owner, or both the trainer and owner, of a horse found to have received a prohibited substance in violation of this chapter shall be subject to a civil penalty of not less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) for each violation, to be recovered by the secretary in any court of competent jurisdiction.

(b) In addition to the penalty specified in subdivision (a) or any other penalty or fine prescribed by law, the secretary may suspend any trainer or owner, or both the trainer and owner, from all competitions at any public horse show or competition for a period of not less than 90 days or more than one year for each violation. It is unlawful for any person suspended from competition by the secretary to compete in any public horse show or competition during the period of suspension. Any person suspended from competition by the secretary who competes in any public horse show or competition during the period of suspension is subject to the civil penalty prescribed by subdivision (a) for each entry during the period of suspension.

(c) The owner or owners of a horse found to have received a prohibited substance in violation of this chapter shall forfeit all prize money or sweepstakes and any trophies, ribbons, and points won at any public horse show or competition by the horse and the same shall be redistributed by the horse show or competition in accordance with its rules or bylaws. The owner shall pay a fee of fifty dollars (\$50) to the public horse show or competition. The horse may be suspended for any period of time specified by the secretary. If the violation occurs at a horse sale, the contract of sale is voidable at the buyer's discretion.

(d) In lieu of civil prosecution by the secretary, the secretary may levy a civil penalty against a person violating any provision of this chapter.

(e) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the secretary's evidence and a right to present evidence on his or her own behalf.

(f) Review Judicial review of the decision of the secretary may be sought by the person against whom the penalty was levied ~~within 30 days of the date of the decision pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(g) After the exhaustion of the review procedure provided in this section, the secretary or his or her representative, may file a certified copy of a final decision of the secretary that directs the payment of a civil penalty and, if applicable, any order that ~~denies a petition for a writ of administrative mandamus relief in a proceeding for judicial review,~~ with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

**Comment.** Section 24007 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (f) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 35928 (amended). Prohibited use of raw milk; judicial review**

35928. (a) When the director, any health officer acting as an agent of the director, or a milk inspection officer acting as an agent of the director having jurisdiction, determines that the oral ingestion by a human being of any raw milk or certified raw milk supply has caused disease in a human being, ~~he~~ the director or officer shall prohibit the use, sale, or disposal of ~~such~~ the milk, except by a method approved by the director, until ~~such~~ the cause has been corrected or eliminated. Application may be made by the director or any such officer to the superior court of the county where the supply is produced or stored in order to obtain an injunction prohibiting the use, sale, or disposal of ~~such~~ the milk. If the court determines that it is a reasonable medical probability that the ingestion by a human being of ~~such~~ the milk supply was the proximate cause of a case of disease in ~~such~~ the human being and that the milk supply is unsafe for human consumption, the court shall take such action as is necessary to enforce the order. When the court thereafter determines that it is a reasonable medical probability that the ingestion by a human being of ~~such~~ the milk supply will not be the proximate cause of a case of disease in a human being and that the milk supply is safe for human consumption, ~~such~~ the order of prohibition shall be dissolved.

(b) When the director, any health officer acting as an agent of the director, or a milk inspection officer acting as an agent of the director having jurisdiction, has

good cause to believe, as a result of either a laboratory test by a laboratory certified by the department or a recognized test, on the animal or the milk from the animal or the herd, that a case of typhoid fever, salmonella infection, bacillary dysentery, diphtheria, respiratory streptococcal infection, brucellosis, or tuberculosis, is present in one or more cows or in the milk of one or more cows of any dairy herd, ~~he~~ the director or officer shall prohibit the use, sale, or disposal of the raw milk or certified raw milk from the herd containing the diseased cow or cows, except by a method approved by the director, until ~~such~~ the cause has been corrected or eliminated. Application may be made by the director or any such officer to the superior court of the county where the milk supply is produced or stored in order to obtain an injunction prohibiting the use, sale, or disposal of ~~such~~ the milk. If the court determines that it is a reasonable medical probability that ~~such~~ the disease is present in the milk of one or more cows of any dairy herd and that the milk supply is unsafe for human consumption, the court shall take such action as is necessary to enforce the order. When the court thereafter determines that it is a reasonable medical probability that ~~such~~ the disease is no longer present on the premises of ~~such~~ the dairy and that the milk supply is safe for human consumption, ~~such~~ the order of prohibition shall be dissolved.

(c) When the director, any health officer acting as an agent of the director, or a milk inspection officer acting as an agent of the director, has good cause to believe, as a result of a laboratory test by a laboratory certified by the department or a recognized test, on the animal or the milk, that a raw milk or certified raw milk supply under the control of the producer of ~~such~~ the milk supply is suspected to be the source of an infection for a communicable disease, or that a raw milk or certified raw milk supply may cause an infection of a communicable disease, ~~he~~ the director or officer shall prohibit the use, sale, or disposal of ~~such~~ the milk, except by a method approved by the director, until ~~such~~ the cause has been corrected or eliminated. However, in the case of ~~such~~ a ~~the~~ milk supply being under the control of either a retailer or distributor to retailers, the director or his agent officer may only prohibit the use, sale, or disposal of ~~such~~ the milk in a manner used for any other market milk or milk product.

(d) Actions taken pursuant to the provisions of subdivision (c) shall in each instance be subject to judicial review under ~~Section 1085 Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure ~~by the superior court of the county with jurisdiction. Such~~ . The review shall be conducted for the purpose of determining if the action taken shall be sustained or dissolved. At issue in the review shall be the questions of adequate protection of the public health and safety, and the guarantee of due process of law for the persons controlling, or producer of, the raw or certified raw milk supply affected by the action. The Notwithstanding Section 1123.470 of the Code of Civil Procedure, the department shall have the burden of proof to sustain the actions of the director or ~~his agents~~ officer at issue in the review.

In the event the court, after ~~such~~ review, finds that the action by the director shall be dissolved, the department shall bear the actual court costs incurred by the persons controlling, or producers of, the raw or certified raw milk supply, and their actual testing costs for any animal or milk tests previously ordered by the department to determine if ~~such~~ the milk supply, which is the subject of ~~such~~ the court action, is the source of, or may cause, an infection for a communicable disease.

As used in this subdivision, “testing costs” means the actual cost of obtaining samples to be tested, the actual cost of laboratory tests, and the actual cost for extra labor to confine the cattle for the purpose of testing.

(e) In addition to any procedural requirements of Section 32731, any routine inspection conducted for the purpose of taking samples of milk or inspecting any cow pursuant to subdivision (b) or (c) shall be conducted only after the issuance of an inspection warrant as provided in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, unless ~~such~~ the inspection is conducted with the knowledge of the persons controlling the milk supply or cow. In the taking of a sample of milk pursuant to subdivision (a), (b), or (c), a duplicate of any sample of raw milk or certified raw milk shall be left with the persons in control of, or producers of, ~~such~~ the milk.

(f) The Legislature finds and declares that the state does not intend to limit or restrict the availability of certified raw milk and certified raw milk products to those persons desiring to consume ~~such~~ the milk and ~~such~~ products, provided ~~such~~ the milk and products meet standards of sanitation and wholesomeness at least equal to market milk that is grade A raw milk, as defined in Section 35891.

**Comment.** Subdivision (d) of Section 35928 is amended to replace the former reference to Section 1085 of the Code of Civil Procedure with a reference to Code of Civil Procedure Sections 1120-1123.950, and to delete the former reference to the superior court. Under Section 1123.510 of the Code of Civil Procedure, the superior court is the proper court for judicial review.

**Food & Agric. Code § 43003 (amended). Civil penalty; judicial review**

43003. (a) In lieu of civil prosecution, the director or the commissioner may levy a civil penalty against any person violating Section 43100 or any regulation adopted pursuant to its provisions of not more than five hundred dollars (\$500) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement.

(5) The director shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the fine, or reverse the decision of the commissioner. A copy of the director's decision shall be delivered or mailed to the appellant and the ~~commissioner~~ commissioner.

(8) ~~Review~~ Judicial review of the decision of the director may be sought by the appellant pursuant to ~~Section 1094.5~~ Section 1120 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 43003 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 46007 (amended). Civil penalty; judicial review**

46007. (a) In lieu of prosecution, the director or a county agricultural commissioner may levy a civil penalty against any person under the enforcement jurisdiction of the director as provided in Section 46000 who violates Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, or any regulation adopted pursuant thereto or pursuant to this chapter, in an amount not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the director or county agricultural commissioner finds that a violation was not intentional, the director or county agricultural commissioner may levy a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b), the director or county agricultural commissioner may issue a notice of violation if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director or county agricultural commissioner,

upon request made within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's or commissioner's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, judicial review of the decision of the director or commissioner may be sought by any person pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within 30 days of the date of the final order of the director or commissioner.

(f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state. A civil penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county.

(g) The director shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all civil penalties levied by the director and by each county agricultural commissioner within the past five years, including the amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the director.

**Comment.** Section 46007, *as amended* by Chapter 1023 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (e) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640. The former provision in subdivision (e) for review to be sought by "any person" is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). This may not be a significant substantive change, because "any person" may have been qualified by the provision in Code of Civil Procedure Section 1086 permitting mandamus to be sought by a party "beneficially interested."

**Food & Agric. Code § 47025 (amended). (Operative until January 1, 2000) Violations and enforcement; judicial review**

47025. (a) In lieu of prosecution, but not precluding suspension or revocation of certified ~~producer's~~ producers' certificates or certified farmers' market certificates, the secretary or the county commissioner may levy a civil penalty against a person who violates this chapter or any regulation implemented pursuant to this chapter.

(b) Civil penalties shall be levied in proportion to the violation, measured as either "serious," "moderate," or "minor."

(1) "Serious" violations are repeat or intentional violations, punishable by a civil penalty of not less than four hundred one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(2) "Moderate" violations are repeat violations or violations that are not intentional, punishable by a civil penalty of not less than one hundred fifty-one dollars (\$151), but not more than four hundred dollars (\$400) per violation.

(3) “Minor” violations are violations that are procedural in nature, punishable by a civil penalty of not less than fifty dollars (\$50), but not more than one hundred fifty dollars (\$150) per violation.

(c) Before a civil penalty is levied pursuant to this section, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of the proposed penalty. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or if the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner’s evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person, upon whom the commissioner levied a civil penalty, requested and appeared at a hearing, the person may appeal the commissioner’s decision to the secretary within 30 days of the date of receiving a copy of the commissioner’s decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner’s decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.

(2) The appellant and the commissioner, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner’s decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the applicant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the commissioner’s decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On appeal pursuant to this section, the secretary may affirm the commissioner’s decision, modify the commissioner’s decision by reducing or increasing the amount of the penalty levied so that it is within the secretary’s

guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to a penalty assessed under subdivision (c) may not file an appeal to the secretary pursuant to this subdivision.

(9) Review ~~judicial review~~ of a decision of the secretary may be sought by the appellant ~~within 30 days of the date of the decision pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(e) After the exhaustion of the appeal and review of procedures provided in this section, the commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty, and, if applicable, a copy of any decision of the secretary, or his or her authorized representative, rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for ~~a writ of administrative mandamus~~ judicial review, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(f) In addition to the civil penalties prescribed in subdivision (b), the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

(g) "Person," as used in this section, means any applicant for a certified producers' certificate or certified farmers' market certificate, producer of agricultural products, certified producer, family member or employees of a certified producer, certified famers' market manager, or certified farmers' market operator engaged or involved in the direct marketing of agricultural products at a certified farmers' market pursuant to this chapter.

**Comment.** Section 47025 (added by Chapter 606 of the Statutes of 1996) is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The provision formerly in subdivision (d)(9) prescribing the time within which judicial review must be sought is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 59234.5 (amended). Deficiency determination**

59234.5. (a) When the director makes a determination that a marketing program assessment payment due pursuant to this chapter is deficient as to the payment due, the director may determine the amount of the deficiency, including any applicable penalty, as provided in this section. After giving notice that a deficiency determination is proposed and an opportunity to file a report or provide supplemental information is provided, the director may make one or more

deficiency determinations of the amount due for any reporting period based on information in the director's possession. When a business is discontinued, a deficiency determination may be made at any time thereafter as to liability arising out of the operation of that business.

The director shall give notice of the proposed deficiency determination and the notice of deficiency determination by placing the notice thereof in a sealed envelope with postage paid addressed to the person affected as it appears in the records of the marketing order or as otherwise available to the director. The notice shall include the information required by Section 1123.630 of the Code of Civil Procedure. The giving of notice is complete at the time of deposit in the United States mail. In lieu of mailing, a notice may be served personally by delivering it to the person to be served.

Except in the case of fraud or failure to file a required return, a notice of a deficiency determination shall be given within four years of the accrual of the deficiency.

(b) The person against whom a deficiency determination is made may petition the director for redetermination within 30 days after the serving of the notice of deficiency determination. If a petition is not filed within 30 days, the deficiency determination shall become final.

A petition for redetermination shall be in writing, state the specific grounds upon which it is based, and be supported by applicable records and declarations under penalty of perjury that the information supporting the petition is accurate and complete. If a petition for redetermination is duly filed, the director shall reconsider the deficiency determination and may grant a hearing thereon. The director shall, as soon as practicable, make an order on redetermination, which shall become final 30 days after service of notice of the order of redetermination upon the petitioner. The notice of the order shall be served in the same manner as the notice of the original deficiency determination.

(c) If any amount required to be paid pursuant to a deficiency determination or redetermination is not paid within the time specified in the notice thereof, the director may, within four years thereafter, file in the Superior Court for the County of Sacramento, or the superior court of any other county, a certificate specifying the amount required to be paid, the name and address of the person liable as it appears on the records of the director, and a request that judgment be entered against the person in that amount 30 days after the filing. Notice of the filing shall be given in the same manner as for the notice of deficiency determination. The court shall enter a judgment in conformance with the director's certificate 30 days after its filing, unless a petition for judicial review has been filed within the 30-day period.

An abstract of the judgment, or a copy thereof, may be filed with the county recorder of any county. From the time of filing of the judgment, the amount of the judgment constitutes a lien upon all of the property in the county owned by the judgment debtor. The lien has the force, effect, and priority of a judgment lien and

shall continue for 10 years from the date of the judgment, unless sooner released or otherwise discharged. The lien imposed by this section is not valid insofar as personal property is concerned against a purchaser for value without actual knowledge of the lien.

Execution shall issue upon the judgment upon request of the director in the same manner as execution may issue upon other judgments, and sales shall be held under execution as prescribed in the Code of Civil Procedure.

(d) ~~The person named in a notice of deficiency determination or redetermination may, within 30 days of the notice of filing with the superior court, file an action required by this section, petition for judicial review thereof, as provided in subdivision (e), under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure in the Superior Court for the County of Sacramento or, with the director's consent, the superior court of any other county where the Attorney General maintains an office. As a condition of staying entry of judgment or granting other relief, the court shall require the filing of a corporate surety bond with the director in the amount of the deficiency stated in the certificate in addition to the matters required by Section 1123.720 of the Code of Civil Procedure. In any court proceeding, the certificate of the director determining the deficiency shall be prima facie evidence of the fee and the amount due and unpaid.~~

(e) The provisions of this section are supplemental to any other procedures for collection and imposition of fees and penalties provided by this chapter.

In lieu of proceeding pursuant to this section, the director may file a complaint for collection of unpaid assessments as provided by law.

**Comment.** Subdivision (d) of Section 59234.5 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 60016 (amended). Deficiency judgment**

60016. (a) When the director makes a determination that a marketing program fee payment due pursuant to this chapter is deficient as to the payment due, the director may determine the amount of the deficiency, including any applicable penalty, as provided in this section. After giving notice that a deficiency determination is proposed and an opportunity to file a report or provide supplemental information is provided, the director may make one or more deficiency determinations of the amount due for any reporting period based on information in the director's possession. When a business is discontinued, a deficiency determination may be made at any time thereafter as to liability arising out of the operation of that business.

The director shall give notice of the proposed deficiency determination and the notice of deficiency determination by placing the notice thereof in a sealed envelope with postage paid addressed to the person affected as it appears in the records of the marketing order or as otherwise available to the director. The notice shall include the information required by Section 1123.630 of the Code of

Civil Procedure. The giving of notice is complete at the time of deposit in the United States mail. In lieu of mailing, a notice may be served personally by delivering it to the person to be served.

Except in the case of fraud or failure to file a required return, a notice of a deficiency determination shall be given within four years of the accrual of the deficiency.

(b) The person against whom a deficiency determination is made may petition the director for redetermination within 30 days after the serving of the notice of deficiency determination. If a petition is not filed within 30 days, the deficiency determination shall become final.

A petition for redetermination shall be in writing, state the specific grounds upon which it is based, and be supported by applicable records and declarations under penalty of perjury that the information supporting the petition is accurate and complete. If a petition for redetermination is duly filed, the director shall reconsider the deficiency determination and may grant a hearing thereon. The director shall, as soon as practicable, make an order on redetermination, which shall become final 30 days after service of notice of the order of redetermination upon the petitioner. The notice of the order shall be served in the same manner as the notice of the original deficiency determination.

(c) If any amount required to be paid pursuant to a deficiency determination or redetermination is not paid within the time specified in the notice thereof, the director may, within four years thereafter, file in the Superior Court for the County of Sacramento, or the superior court of any other county, a certificate specifying the amount required to be paid, the name and address of the person liable as it appears on the records of the director, and a request that judgment be entered against the person in that amount 30 days after the filing. Notice of the filing shall be given in the same manner as for the notice of deficiency determination. The court shall enter a judgment in conformance with the director's certificate 30 days after its filing, unless a petition for judicial review has been filed within the 30-day period.

An abstract of the judgment, or a copy thereof, may be filed with the county recorder of any county. From the time of filing of the judgment, the amount of the judgment constitutes a lien upon all of the property in the county owned by the judgment debtor. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the date of the judgment, unless sooner released or otherwise discharged. The lien imposed by this section is not valid insofar as personal property is concerned against a purchaser for value without actual knowledge of the lien.

Execution shall issue upon the judgment upon request of the director in the same manner as execution may issue upon other judgments, and sales shall be held under execution as prescribed in the Code of Civil Procedure.

(d) The person named in a notice of deficiency determination or redetermination may, within 30 days of the notice of filing with the superior court, file an action

required by this section, petition for judicial review thereof , as provided in subdivision (e), under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure in the Superior Court for the County of Sacramento or, with the director's consent, the superior court of any other county where the Attorney General maintains an office. As a condition of staying entry of judgment or granting other relief, the court shall require the filing of a corporate surety bond with the director in the amount of the deficiency stated in the certificate in addition to the matters required by Section 1123.720 of the Code of Civil Procedure. In any court proceeding, the certificate of the director determining the deficiency shall be prima facie evidence of the fee and the amount due and unpaid.

(e) The provisions of this section are supplemental to any other procedures for collection and imposition of fees and penalties provided by this chapter.

In lieu of proceeding pursuant to this section, the director may file a complaint for collection of unpaid fees as provided by law.

**Comment.** Subdivision (d) of Section 60016 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 61899 (amended). Judicial review**

61899. Any order of the director made pursuant to this chapter which substantially affects the rights of any interested party may be reviewed ~~by any court of competent jurisdiction. Any such action~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The proceeding shall be commenced within 30 days ~~after the effective date of the order complained of, the time provided in Section 1123.640 of the Code of Civil Procedure or within 30 days after the injurious effect complained of becomes reasonably apparent , whichever is later.~~

**Comment.** Section 61899 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Food & Agric. Code § 62665 (amended). Judicial review**

62665. Any order of the director made pursuant to this chapter which substantially affects the rights of any directly affected party shall be subject to judicial review ~~upon petition to the appropriate court. The petition shall be filed within 30 days after the effective date of the order.~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 62665 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former 30-day time limit for review is superseded by Code of Civil Procedure Section 1123.640.

**Food & Agric. Code § 63902 (amended). Grievance; exhaustion of administrative remedies**

63902. The commission shall adopt procedures to grant individuals aggrieved by its actions or determinations an informal hearing before the commission or

before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the secretary. After exhaustion of all administrative remedies, the determination of the secretary is subject to judicial review upon petition filed with the appropriate superior court.

(a) On issuance of an emergency decision under this article, the person to which the agency action is directed may obtain judicial review of the decision in the manner provided in this section without exhaustion of administrative remedies.

(b) ~~Judicial review under this section shall be pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ subject to the following provisions:

(1) The hearing shall be on the earliest day that the business of the court will admit of, but not later than 15 days after service of the petition on the agency.

(2) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(3) A party, on written request to another party, before the proceedings for review and within 10 days after issuance of the emergency decision, is entitled to appropriate discovery.

(4) The relief that may be ordered on judicial review is limited to a stay of the emergency decision.

(a) A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

(b) The agency in its discretion may issue a declaratory decision in response to the application. The agency shall not issue a declaratory decision if any of the following applies:

(1) Issuance of the decision would be contrary to a regulation adopted under this article.

(2) The decision would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory decision proceeding.

(3) The decision involves a matter that is the subject of pending administrative or judicial proceedings.

(c) An application for a declaratory decision is not required for exhaustion of the applicant's administrative remedies for purposes of judicial review.

Whenever a hearing or investigation is conducted by the board or its authorized representative in regard to an appeal by an employee, the hearing or investigation shall be commenced within a reasonable time after the filing of the petition and the board shall render its decision within a reasonable time after the conclusion of the hearing or investigation, except that the period from the filing of the petition to the decision of the board shall not exceed six months or 90 days from the time of the submission, whichever time period is less, and except that the board may extend the six-month period up to 45 additional days. In the event of

an extension, the board shall publish substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period. Submission occurs on the last day of the hearing, if no other documents are to be filed, or on the last day designated for the filing of briefs or other evidence necessary to complete the record. The provisions relating to the six-month or the 90-day periods for a decision may be waived by the employee but if not so waived, a failure to render a timely decision is an exhaustion of all available administrative remedies. In cases involving complaints of discrimination, harassment, or retaliation, where the executive officer renders a decision, the decision shall be rendered within four months of the filing of the appeal.

**Comment.** Section 63902 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Public Entities (part 2)

### **Gov't Code § 942 (amended). Judicial review**

942. Nothing in this division shall be construed to deprive a claimant of the right to resort to ~~writ of mandate or other a proceeding~~ for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure against the public entity or the board or any employee of the public entity to compel payment of a claim when and to the extent that it has been allowed and is required by this division to be paid.

**Comment.** Section 942 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to compel performance of a ministerial duty of a public entity. See Code Civ. Proc. §§ 1121.120, 1123.610. However, an action against the public entity under the California Tort Claims Act is not subject to the judicial review provisions of the Code of Civil Procedure. See *id.* § 1121(a)(3) and Comment.

## Local Public Entities

### **Gov't Code § 970.2 (amended). Duty of public entity to pay judgment; judicial review**

970.2. A local public entity shall pay any judgment in the manner provided in this article. A ~~writ of mandate is an appropriate remedy to compel~~ a local public entity may be compelled to perform any act required by this article in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 970.2 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to compel performance of a ministerial duty of a public entity. See Code Civ. Proc. §§ 1121.120, 1123.610. However, an action against the public entity under the California Tort Claims Act is not subject to the judicial review provisions of the Code of Civil Procedure. See *id.* § 1121(a)(3) and Comment.

**Gov't Code § 7911 (amended). Return of excess revenues; judicial review**

7911. (a) For the purposes of Section 2 of Article XIII B, a local jurisdiction may return excess revenues by granting a tax credit or refund, by providing a temporary suspension of tax rates or fee schedules, or by any other means consistent with the intent of that section. The determination by the governing body of ~~such~~ the entity of the means by which ~~such~~ excess revenues are to be returned is a legislative act.

(b) Judicial review of ~~such~~ the determination may be obtained only by a proceeding ~~for a writ of mandate under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ which shall be brought within 30 days after the governing body's determination.

(c) All courts wherein ~~such~~ the ~~actions~~ proceedings are or may be hereafter pending, including any court reviewing ~~such~~ the action on appeal from the decision of a lower court, shall give ~~such~~ the actions preference over all other civil actions therein, in the manner of setting the same for hearing or trial and in hearing the same, to the end that all such actions shall be quickly heard and determined.

**Comment.** Section 7911 is amended to replace the former reference to a writ of mandate with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.850.

Administrator for Oil Spill Response, Department of Fish & Game

**Gov't Code § 8670.68 (amended). Complaint; hearing; judicial review**

8670.68. (a) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 8670.67 or 8670.67.5. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 10 days after service of the complaint, request a hearing by filing with the administrator a notice of defense. A notice of defense is deemed to be filed within the 10-day period if it is postmarked within the 10-day period. If a hearing is requested by the respondent, it shall be conducted within 90 days after receipt of the notice of defense by the administrator. If no notice of defense is filed within 10 days after service of the complaint, the administrator shall issue an order setting liability in the amount proposed in the complaint unless the administrator and the party have entered into a settlement agreement, in which case the administrator shall issue an order setting liability in the amount specified in the settlement agreement. If the party has not filed a notice of defense or if the administrator and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections

11507 to 11517, inclusive, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

(c) Orders setting civil liability issued pursuant to this section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance. Copies of the orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

~~(d) Within 30 days after service of a copy of a decision issued by the hearing officer, any Any person so served may file with a court of appeal a petition for writ of mandate for seek judicial review of the decision under Title 2 (commencing with Section 1120) of Title 2 of Part 3 of the Code of Civil Procedure. Any person who fails to file the petition within the 30-day period provided in Section 1123.640 of the Code of Civil Procedure may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

(e) Any order for administrative penalties entered pursuant to ~~his~~ this section shall be subject to interest at the legal rate from the filing of the complaint as specified in subdivision (a). The prevailing party shall be entitled to reasonable attorney's fees and costs.

**Comment.** Section 8670.68 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (d) for review jurisdiction in the court of appeal is superseded by Code of Civil Procedure Section 1123.510 (superior court jurisdiction). The former fourth sentence of subdivision (d) (substantial evidence review) is superseded by Code of Civil Procedure Sections 1123.420 (independent judgment review of application of law to fact) and 1123.430 (substantial evidence review of factfinding). The former fifth sentence of subdivision (d) (petition for mandate does not stay corrective action or penalties) is superseded by Code of Civil Procedure Section 1123.720 (stay in discretion of reviewing court).

**Gov't Code § 8670.69.6 (amended). Judicial review of cease and desist order**

8670.69.6. Within 30 days after service of a copy of a cease and desist order issued by the administrator under Section 8670.69.4, any aggrieved party may ~~file with the superior court a petition for writ of mandate for~~ judicial review thereof pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Failure to ~~file such an action~~ petition for review shall not preclude a party from challenging the reasonableness and validity of an order of the administrator in any judicial proceeding brought to enforce the order or for other civil remedies.

**Comment.** Section 8670.69.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to the superior court is continued in substance in Code of Civil Procedure Section 1123.510 (jurisdiction in superior court).

### State Agencies

**Gov't Code § 11130 (amended). Commencement of action**

11130. Any interested person may commence ~~an action by mandamus, injunction, or declaratory relief~~ a proceeding under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to actions or threatened future action by members of the state body.

**Comment.** Section 11130 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Gov't Code § 11130.3 (amended). Voiding action in violation of open meeting law**

11130.3. (a) Any interested person may commence ~~an action by mandamus, injunction, or declaratory relief~~ a proceeding under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. ~~Any action seeking such a judicial determination shall be commenced within 30 days from the date the action was taken.~~ Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

**Comment.** Section 11130.3 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former provision in subdivision (a) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

#### Administrative Procedure Act (rulemaking)

##### **Gov't Code § 11350.3 (amended). Judicial review of disapproved or repealed regulation**

11350.3. Any interested person may obtain a judicial declaration as to the validity of a regulation which the office has disapproved or ordered repealed pursuant to Section 11349.3, 11349.6, or 11349.7 by ~~bringing an action for declaratory relief in superior court in accordance with~~ filing a petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so determines, it may order the office to immediately file the regulation with the Secretary of State.

**Comment.** Section 11350.3 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

#### Administrative Procedure Act (administrative adjudication)

##### **Gov't Code § 11460.80 (amended). (Operative July 1, 1997) Judicial review**

11460.80. (a) On issuance of an emergency decision under this article, the person to which the agency action is directed may obtain judicial review of the decision in the manner provided in this section without exhaustion of administrative remedies.

(b) ~~Judicial review under this section shall be pursuant to Section 1094.5 under~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, subject to the following provisions:

(1) The hearing shall be on the earliest day that the business of the court will admit of, but not later than 15 days after service of the petition on the agency.

(2) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(3) A party, on written request to another party, before the proceedings for review and within 10 days after issuance of the emergency decision, is entitled to appropriate discovery.

(4) The relief that may be ordered on judicial review is limited to a stay of the emergency decision.

**Comment.** Section 11460.80 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

☞ **Note.** Substantial evidence review in subdivision (b)(2) is preserved because Section 11460.80 may apply to local agencies. Gov't Code § 11410.40. Local agencies would otherwise have independent judgment review if a fundamental vested right is involved. See Section 1123.440.

**Gov't Code § 11517 (amended). Decision in contested case**

11517. (a) If a contested case is heard before an agency itself, all of the following provisions apply:

(1) The administrative law judge who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency.

(2) No member thereof who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(b) If a contested case is heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted a proposed decision in a form that may be adopted as the decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after receipt of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency. The agency itself may do any of the following:

(1) Adopt the proposed decision in its entirety.

(2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(3) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(c) If the proposed decision is not adopted as provided in subdivision (b), the agency itself may decide the case upon the record, including the transcript, or an agreed statement of the parties, with or without taking additional evidence, or may refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy. By stipulation of the parties, the agency may decide the case upon the record without including the

transcript. If the case is assigned to an administrative law judge he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party and his or her attorney as prescribed in subdivision (b). The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence. The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(d) The proposed decision shall be deemed adopted by the agency 100 days after delivery to the agency by the Office of Administrative Hearings, unless within that time (i) the agency notifies the parties that the proposed decision is not adopted as provided in subdivision (b) and commences proceedings to decide the case upon the record, including the transcript, or without the transcript where the parties have so stipulated, or (ii) the agency refers the case to the administrative law judge to take additional evidence. In a case where the agency commences proceedings to decide the case upon the record and has ordered a transcript of the proceedings, the 100-day period shall begin upon delivery of the transcript. If the agency finds that a further delay is required by special circumstances, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(e) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

**Comment.** Section 11517 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Gov't Code § 11529 (amended). Interim orders**

11529. (a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

(1) To be represented by counsel.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(3) To present written evidence in the form of relevant declarations, affidavits, and documents.

The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

(4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

(1) There is a reasonable probability that the petitioner will prevail in the underlying action.

(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date

that matter is submitted, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

**Comment.** Section 11529 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## State Fair Employment and Housing Commission

### Gov't Code § 12987.1 (amended). Judicial review

12987.1. (a) Any party aggrieved by the commission's final order for relief may obtain a judicial review of that order ~~in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure ~~except that the limitations on the court's remedial powers as described in subdivision (f) of that section shall not apply~~ the court is not limited to the relief provided in subdivision (c) of Section 1123.730 of the Code of Civil Procedure, and may grant any relief authorized by that section.

(b) ~~The superior court, in reviewing the commission's final order, may award the following relief:~~

(1) ~~Grant to the petitioner, or any other party, temporary relief, including, but not limited to, a restraining order, or other order as the court deems just and proper.~~

(2) ~~Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings, and enforce the order to the extent that it is affirmed or modified.~~

(c) Any party to the proceeding before the commission or aggrieved person may intervene as a matter of right in the superior court proceeding.

(d) ~~(c)~~ When the time for petitioning a court for review of the commission's order has expired, the department or any party to the commission proceeding may

petition a court for a decree enforcing the commission's order. The court may grant any relief necessary to ensure compliance with the commission's order.

**Comment.** Section 12987.1 is amended to revise the references to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The language added to the last portion of subdivision (a) continues the substance of the former language it replaces. The language formerly found in subdivision (b) concerning permissible relief is continued in substance in Code of Civil Procedure Sections 1123.720 (stay of agency action) and 1123.730 (court may set aside or modify agency action and make interlocutory orders).

## State Board of Control

### **Gov't Code § 13969.1 (amended). Decision; review**

13969.1. (a) The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his or her representative personally or sent to them by mail.

(b) The board itself may order a reconsideration of all or part of the application for assistance on its own motion or on written request of the applicant or his or her representative. The board may not grant more than one such request on any application for assistance. The board shall not consider any such request filed with the board more than 30 days after the personal delivery or 60 days after the mailing of the original decision.

(c) ~~Judicial review of a final decision made pursuant to this article may be had by filing a petition for a writ of mandate review in accordance with the provisions under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. The Notwithstanding Section 1123.640 of the Code of Civil Procedure, the petition shall be filed as follows:~~

(1) Where no request for reconsideration is made, within 30 days of personal delivery or within 60 days of the mailing of the board's decision on the application for assistance.

(2) Where a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or within 60 days of the mailing of the notice of rejection.

(3) Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or within 60 days of the mailing of the final decision on the reconsidered application.

(d)(1) ~~In an action resulting in the issuance of a writ of mandate granting of relief by the court pursuant to this section the court may order the board to pay to the applicant's attorney reasonable attorney's fees or one thousand dollars (\$1,000), whichever is less. If action is taken by the board in favor of the applicant in response to the filing of the petition, but prior to a judicial determination, the board shall pay the applicant's costs of filing the petition.~~

(2) In case of appeal by the board of a decision on the petition for ~~writ of~~ mandate review that results in a decision in favor of the applicant, the court may order the board to pay to the applicant's attorney reasonable attorney fees.

(3) Nothing in this section shall be construed to prohibit or limit an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.

**Comment.** Section 13969.1 is amended to replace the former references to a writ of mandate with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.850.

### California Health Facilities Financing Authority

#### **Gov't Code § 15444 (amended). Rights and remedies of bond holders**

15444. Any holder of revenue bonds issued under the provisions of this part or any of the coupons appertaining thereto, and the trustee or trustees under any indenture or trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any ~~such~~ indenture or trust agreement securing, ~~such~~ the bonds, may, either at law or in equity, by suit, action, mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under ~~such~~ the resolution or indenture or trust agreement, and may enforce and compel the performance of all duties required by this part or by ~~such~~ the resolution, indenture, or trust agreement to be performed by the authority or by any officer, employee or agent thereof.

**Comment.** Section 15444 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to compel performance of a ministerial duty by a public entity. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Commission on State Mandates

#### **Gov't Code § 17559 (amended). Judicial review**

17559. A claimant or the state may commence a proceeding ~~in accordance with the provisions of Section 1094.5~~ for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing.

**Comment.** Section 17559 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Board of Administration, Public Employees Retirement System

**Gov't Code § 20126 (technical amendment). Refusal to admit liability**

20126. Refusal by this system to admit liability pursuant to any provision of this part shall not be considered arbitrary or capricious action or conduct within the meaning of Section ~~800~~ 1123.950 of the Code of Civil Procedure, or any other provision of law.

**Comment.** Section 20126 is amended to revise the reference to former Section 800.

County Boards of Supervisors (part 1)

**Gov't Code § 26370 (amended). Rights and remedies of bond holders**

26370. The holder of any bond issued pursuant to this chapter may by ~~mandamus or other appropriate~~ a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the board or its officers, agents or employees in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of any project or the collection, deposit, investment, application and disbursement of rates, charges, fees and all other revenues derived from the operation and use of any project, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds. The enumeration of ~~such~~ these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of the bonds issued pursuant to this chapter.

**Comment.** Section 26370 is amended to replace the former reference to mandamus or other appropriate proceeding with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Gov't Code § 26470 (amended). Rights and remedies of bond holders**

26470. The holder of any bond issued pursuant to this chapter may by ~~mandamus or other appropriate~~ a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the board or its officers, agents or employees in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of any project or the collection, deposit, investment, application and disbursement of charges and fees and all other revenues derived from the operation and use of any project, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds. The Subject to Section 1121.120 of the Code of Civil Procedure, the enumeration of ~~such~~ these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this chapter.

**Comment.** Section 26470 is amended to replace the former reference to mandamus or other appropriate proceeding with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### County Boards of Retirement

#### **Gov't Code § 31725 (amended). Determination of permanent incapacity**

31725. (a) Permanent incapacity for the performance of duty shall in all cases be determined by the board.

(b) If the medical examination and other available information do not show to the satisfaction of the board that the member is incapacitated physically or mentally for the performance of his duties in the service and the member's application is denied on this ground the board shall give notice of such the denial to the employer. The notice shall include the information required by Section 1123.630 of the Code of Civil Procedure. The employer may obtain judicial review of such the action of the board by ~~filing a petition for a writ of mandate in accordance with~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or by joining or intervening in ~~such action~~ the proceeding filed by the member within 30 days of the mailing of such the notice. If ~~such the~~ petition is not filed or the court enters judgment denying the writ, whether on the petition of the employer or the member, and the employer has dismissed the member for disability the employer shall reinstate the member to his employment effective as of the day following the effective date of the dismissal.

**Comment.** Section 31725 is amended to replace the former reference to the writ of mandamus with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.850.

### Local Agencies (part 1)

#### **Gov't Code § 50770 (amended). Rights and remedies of bond holders**

50770. The holder of any bond issued pursuant to this chapter may by ~~mandamus or other appropriate~~ a proceeding under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the board or its officers, agents or employees in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of any project or the collection, deposit, investment, application and disbursement of rates, charges, fees and all other revenues derived from the operation and use of any project, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds. The Subject to Section 1121.120 of the Code of Civil Procedure, the enumeration of such these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this chapter.

**Comment.** Section 50770 is amended to replace the former reference to mandamus or other appropriate proceeding with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Governing Boards of Cities and Counties

#### **Gov't Code § 51154 (amended). Judicial review**

51154. (a) Subject to subdivision (b), Section 51152 shall be enforceable only by mandamus proceedings by the local governing body administering the timberland production zone or the Secretary of Resources . However, as applied to condemnors whose determination of necessity is not conclusive by statute, evidence as to the compliance of the condemnor with Section 51152 shall be admissible on motion of any of the parties in any action otherwise authorized to be brought by the landowner or in any action against ~~him~~ the landowner.

(b) Section 51152 shall be enforceable against a public agency by a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 51154 is amended to add subdivision (b). The judicial review provisions of the Code of Civil Procedure have replaced mandamus as the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### County Boards of Supervisors (part 2) or City Council

#### **Gov't Code § 51286 (amended). Judicial review**

51286. (a) ~~Any action or court proceeding which, on the grounds of alleged noncompliance with the requirements of this chapter, seeks to attack, review, set aside, void, or annul a decision of a board of supervisors or a city council to cancel a contract shall be brought pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(b) The Notwithstanding Sections 1123.640 and 1123.650 of the Code of Civil Procedure, the action or proceeding shall be commenced within 180 days from the council or board order acting on a petition for cancellation filed under this chapter.

**Comment.** Section 51286 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

#### **Gov't Code § 51294 (amended). Enforcement**

51294. (a) Subject to subdivision (b), Section 51292 shall be enforceable only by mandamus proceedings by the local governing body administering the agricultural preserve or the Director of Conservation. However, as applied to condemnors whose determination of necessity is not conclusive by statute, evidence as to the compliance of the condemnor with Section 51292 shall be admissible on motion of any of the parties in any action otherwise authorized to be brought by the landowner or in any action against the landowner.

(b) Section 51152 shall be enforceable against a public agency by a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 51294 is amended to add subdivision (b). The judicial review provisions of the Code of Civil Procedure have replaced mandamus as the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Gov't Code § 51294.2 (amended). Validation proceedings**

51294.2. (a) If any local governing body administering an agricultural preserve within 90 days after receiving a request pursuant to Section 51294.1 has not approved or agreed to the location of water transmission facilities as provided in Section 51294.1 or in subdivision (a) of Section 51293, the public agency making such the request may file ~~an action~~ a petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure against such the local governing body in the superior court of one of the counties within which any such body has failed to approve the location of facilities or the acquisition of land therefor, to determine whether the public agency proposing the location or acquisition has complied with the requirements of Section 51292. If the court should so determine, the provisions of Section 51292 shall not apply to the location of water transmission facilities, nor the acquisition of land therefor, in any of the counties into which they shall extend, and no writ of mandamus shall be issued or relief under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure granted in relation thereto pursuant to Section 51294. For the purposes of this section, the county selected for commencing ~~such the~~ the action is the proper county for the trial of ~~such the~~ the proceedings. In determining whether the public agency has complied with the requirements of Section 51292, the court shall consider the alignment, functioning and operation of the entire transmission facility.

(b) Courts shall give any ~~action~~ proceeding brought under the provisions of this section preference over all other civil actions therein, to the end that ~~such actions~~ the proceeding shall be quickly heard and determined.

**Comment.** Section 51294.2 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Gov't Code § 53069.4 (technical amendment). Violation of local ordinance; appeal**

53069.4. (a)(1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty

amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1), shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b)(1) ~~Notwithstanding the provisions of Section 1094.5 or 1094.6 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the municipal court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.~~

(2) The fee for filing the notice of appeal shall be twenty-five dollars (\$25). The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the twenty-five dollar (\$25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

**Comment.** Section 53069.4 is amended to revise the reference to the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950.

**Gov't Code § 53595.35 (amended). Remedies of trustees and holders of debt instruments**

53595.35. (a) In the discretion of the legislative body of a local agency, any debt instruments issued under this article may be secured by an indenture by and between the local agency and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. The indenture or resolution providing for the issuance of the debt instruments may pledge or assign the tax increment revenues or the interest of the local agency therein. The indenture may contain provisions for protecting and enforcing the rights and remedies of the holders of debt instruments as may be reasonable and proper and not in violation of law, including particular provisions specifically authorized by law to be included in any indenture of the local agency authorizing debt instruments pursuant to this article. The indenture may set forth the rights and remedies of the holders of debt instruments and of the trustee or trustees, and may restrict rights of action of holders of debt instruments. In addition to the foregoing, the indenture may contain other provisions as the local agency may deem necessary or desirable to facilitate the issuance and sale of the debt instruments or for the protection and security of the holders of debt instruments.

(b) Any holder of debt instruments issued under this article or any of the coupons appertaining thereto, and the trustee or trustees under any indenture, except to the extent the rights herein given may be restricted by any indenture securing the debt instruments, may, either at law or in equity, by suit, action, mandamus, proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceeding, protect and enforce any and all rights under the laws of the state or granted by this article or under indenture, and may enforce and compel the performance of all duties required by this article or by the indenture to be performed by the local agency or by any officer, employee, or agent thereof.

**Comment.** Section 53595.35 is amended to replace the former reference to enforcement by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Local Agencies (part 2)

**Gov't Code § 54642 (amended). Enforcement of rights of bondholders**

54642. By mandamus a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or other suit or proceeding at law or in equity a bondholder or ~~his~~ the bondholder's trustee may enforce ~~his~~ the bondholder's rights against the local agency, its legislative body, and any of its officers, agents, and employees and compel them to perform and carry out their duties under this chapter and their agreements with bondholders.

**Comment.** Section 54642 is amended to replace the former reference to enforcement by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Gov't Code § 54702.8 (amended). Action by holder of bonds**

54702.8. Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee or trustees appointed pursuant to any resolution authorizing the issuance of ~~such~~ the bonds, except to the extent the rights thereof may be restricted by the resolution authorizing the issuance of the bonds, may, either at law or in equity, by suit, action, ~~mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~, or other proceedings, protect or enforce any and all rights specified in the laws of this state or in ~~such~~ the resolution, and may enforce and compel the performance of all duties required by this chapter or by ~~such~~ the resolution to be performed by the local agency or by any officer, employee, or agent thereof.

**Comment.** Section 54702.8 is amended to replace the former reference to enforcement by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Gov't Code § 54740.6 (amended). Judicial review**

54740.6. (a) Any party aggrieved by a final order issued by the governing board of a local agency under Section 54740.5, after granting review of the order of a hearing officer, may obtain judicial review of the order of the board ~~in the superior court by filing in the court a petition for writ of mandate within 30 days following the service of a copy of a decision and order issued by the board under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~. Any party aggrieved by a final order of a hearing officer issued under Section 54740.5, for which the board denies review, may obtain review, of the order of the hearing officer ~~in the superior court by filing in the court a petition for writ of mandate within 30 days following service of a copy of a decision and order denying review by the board under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~.

(b) If no aggrieved party petitions for writ of mandate review within the time provided by ~~this section~~ in Section 1123.650 of the Code of Civil Procedure, an order of the board or a hearing officer shall not be subject to review by any court or agency, except that the board may grant review on its own motion of an order issued under Section 54740.5 after the expiration of the time limits set by ~~that section~~ Section 1123.650 of the Code of Civil Procedure.

(c) The evidence before the court shall consist of the record before the board, including the hearing officer's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement

policies of this division. ~~In every such case, the court shall exercise its independent judgment on the evidence.~~

~~(d) Except as otherwise provided in this section, subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.~~

**Comment.** Section 54740.6 is amended to replace the former references to mandamus with references to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former provision for superior court jurisdiction is continued in substance in Code of Civil Procedure Section 1123.510. The former time limit for a mandamus petition under this section is superseded by the time limit in Code of Civil Procedure Section 1123.650. The former provision for the court to exercise independent judgment on the evidence is superseded by Code of Civil Procedure Sections 1123.420 (independent judgment on application of law to fact) and 1123.430 (substantial evidence review of pure questions of fact).

**Gov't Code § 54960 (amended). Proceeding to prevent violation; recording closed sessions; discovery of tapes**

54960. (a) The district attorney or any interested person may ~~commence an action by mandamus, injunction or declaratory relief~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody

and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

**Comment.** Section 54960 is amended to replace the former reference to mandamus, injunction or declaratory relief with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. See also Code Civ. Proc. § 1123.730 (court may grant injunctive or declaratory relief).

**Gov't Code § 54960.1 (amended). Proceeding to determine validity of action**

54960.1. (a) The district attorney or any interested person may ~~commence an action by mandamus or injunction~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any ~~action~~ proceeding being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c)(1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of

Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the ~~action~~ proceeding described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the ~~action~~ proceeding pursuant to subdivision (a) or thereafter be barred from commencing the ~~action~~ proceeding.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, and 54956.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any ~~action~~ proceeding seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 has been cured or corrected by a subsequent action of the legislative body, the ~~action~~ proceeding filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

**Comment.** Section 54960.1 is amended to replace the former reference to mandamus or injunction with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Department of Housing and Community Development (part 1),  
Council of Governments, or Local Government

**Gov't Code § 65584 (amended). Local government share of regional housing needs**

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties which already have disproportionately high proportions of lower income households. Based upon data provided by the Department of Finance, in consultation with each council of government, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each

city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). Where the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c)(1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographic restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that

share. If the council of governments or the department grant a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share which was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount which will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a) of Section 65584.

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d)(1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county which directly limits, by number, the building permits which may be issued for residential construction, or which limits for a set period of time the number of buildable lots which may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county which imposes a moratorium on residential construction for a set period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings which specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

**Comment.** Section 65584 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Gov't Code § 65590 (amended). Replacement dwelling units in coastal zone; exemptions**

65590. (a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.

(b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant

for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either “coastal dependent,” as defined in Section 30101 of the Public Resources Code, or “coastal related,” as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government’s local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall, (i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and (ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does

not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not “coastal dependent”, as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

(d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide ~~such~~ the housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.

(e) Any determination of the “feasibility” of an action required to be taken by this section shall be reviewable ~~pursuant to the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.

(g) As used in this section:

(1) “Conversion” means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a ~~residential~~ residential hotel to a nonresidential use.

(2) “Demolition” means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.

(3) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

(h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following:

(1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government’s jurisdiction which is located within the coastal zone.

(2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.

(3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.

(i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

(j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.

(k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

**Comment.** Section 65590 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Cities and Counties

### **Gov't Code § 65751 (amended). Action challenging general plan**

65751. Any action to challenge a general plan or any element thereof on the grounds that ~~such~~ the plan or element does not substantially comply with the requirements of Article 5 (commencing with Section 65300) shall be brought ~~pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure.

**Comment.** Section 65751 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## Local Agencies (part 3)

### **Gov't Code § 66499.37 (amended). Judicial review**

~~66499.37. Any action or~~ A proceeding to attack, review, set aside, void or annul the decision of an advisory agency, appeal board or legislative body concerning a subdivision, or of any of the proceedings, acts or determinations taken, done or made prior to ~~such~~ the decision, or to determine the reasonableness, legality or validity of any condition attached thereto, shall ~~not be maintained by any person unless such action or proceeding is commenced and service of summons effected within 90 days after the date of such decision.~~ Thereafter be brought under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. If the proceeding is not brought within the time therein provided, all persons are barred from any such action or the proceeding or any defense of invalidity or unreasonableness of such the decision or of such the proceedings, acts or determinations. Any such The proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain and forcible entry and unlawful detainer proceedings.

**Comment.** Section 66499.37 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former limitations provision in Section 66499.37, requiring the action or proceeding to be brought and summons served within 90 days after the date of the decision, is superseded by Code of Civil Procedure Section 1123.650 (90 days after decision announced or required notice given). A summons is not required in judicial review proceedings. See Code Civ. Proc. § 1123.610(c) & Comment.

## San Francisco Bay Conservation and Development Commission (part 1)

### **Gov't Code § 66639 (amended). Judicial review**

66639. (a) Within 30 days after service of a copy of a cease and desist order issued by the executive director under Section 66637 or the commission under Section 66638, or within 30 days after the notice required by Section 1123.630 of the Code of Civil Procedure is given, whichever is later, any aggrieved party

~~may file with the superior court a petition for writ of mandate for judicial review thereof pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Sections 1123.640 and 1123.650 of the Code of Civil Procedure do not apply to the proceeding. Failure to file such an action the petition shall not preclude a party from challenging the reasonableness and validity of an order of the executive director or the commission in any judicial proceedings brought to enforce such the order or for other civil remedies.~~

~~(b) The evidence before the court in any proceeding to review an order of the commission described in subdivision (a) shall consist of the record before the commission, and in cases where it is claimed that the findings are not supported by the evidence, abuse of discretion is established only if the court determines that the findings are not supported by substantial evidence in the light of the whole record.~~

**Comment.** Section 66639 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Subdivision (b) is deleted. The contents of the record for judicial review are prescribed in Code of Civil Procedure Section 1123.820. The standard of review of the sufficiency of the evidence is prescribed in Code of Civil Procedure Sections 1123.420 (independent judgment review of application of law to fact) and 1123.430 (substantial evidence review of pure questions of fact).

**Gov't Code § 66641.7 (amended). Judicial review; action to collect penalties**

66641.7. (a) Within 30 days after service of an order issued under Section 66641.6, ~~or within 30 days after the notice required by Section 1123.630 of the Code of Civil Procedure is given, whichever is later,~~ any aggrieved party may file ~~with the superior court a petition for writ of mandate for judicial review thereof pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Sections 1123.640 and 1123.650 of the Code of Civil Procedure do not apply to the proceeding.~~ If no aggrieved party petitions for a writ of mandate review within the time provided by this section, an order of the commission shall not be subject to review by any court or agency, except that the commission may grant review on its own motion of an order issued under Section 66641.6 after the expiration of the time limits set by this section.

(b) Upon request of the commission, the Attorney General shall institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Section 66641.6. The court shall accord priority on its calendar to ~~any such the~~ the action.

**Comment.** Section 66641.7 is amended to revise the references to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Tahoe Regional Planning Agency

### **Gov't Code § 66802 (added). Judicial review**

66802. An action filed in a California court alleging noncompliance with the provisions of this compact or with an ordinance or regulation of the agency shall be by petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Under Section 66802, judicial review involving the Tahoe Regional Planning Compact is under the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950. This is consistent with Code of Civil Procedure Sections 1121.120 (other forms of judicial review replaced) and 1123.610 (petition for review). Actions alleging noncompliance with this compact or with an ordinance or regulation of the agency is authorized by Section 66801, Article VI.

Formerly, actions alleging noncompliance with the Tahoe Regional Planning Compact were for ordinary mandamus, declaratory or injunctive relief, or inverse condemnation. See *People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971) (mandamus); *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 105 Cal. App. 3d 394, 396, 164 Cal. Rptr. 357 (1980) (mandamus, injunctive relief); *Viso v. State of California*, 92 Cal. App. 3d 15, 154 Cal. Rptr. 580 (1979) (declaratory and injunctive relief, inverse condemnation); *Sierra Tereno v. Tahoe Regional Planning Agency*, 79 Cal. App. 3d 439, 144 Cal. Rptr. 776 (1978) (inverse condemnation). The judicial review provisions in the Code of Civil Procedure replace mandamus and declaratory and injunctive relief in these cases. See Code Civ. Proc. § 1121.120. However, these provisions cannot replace actions for inverse condemnation. Inverse condemnation is of constitutional origin, and cannot be curtailed by statute. California Government Tort Liability Practice § 2.97, at 181-82 (Cal. Cont. Ed. Bar, 3d ed. 1992). Concerning joinder of a cause of action for inverse condemnation with a judicial review proceeding, see Code Civ. Proc. § 1121.120(b) and Comment.

## San Francisco Bay Area Transportation Terminal Authority

### **Gov't Code § 67620 (amended). Rights and remedies of bondholders**

67620. The holder of any bond may, for the equal benefit and protection of all holders of bonds similarly situated, do either of the following:

(a) By mandamus or other appropriate proceedings a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the commission or department or assumed by it, its officers, agents, or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of the regional transit terminal, or in connection with the collection, deposit, investment, application, and disbursement of the rates, rents, fees, charges, and other revenues derived from the operation and use of the terminal, or in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds.

(b) By action or suit in equity, require the commission or department to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds.

**Comment.** Subdivision (a) of Section 67620 is amended to refer to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

### Board of Directors of Industrial Development Authority of City or County

#### **Gov't Code § 91537 (amended). Resolution authorizing issuance of bonds**

91537. The issuance of bonds shall be authorized by resolution of the board adopted at any time following the determinations provided for in subdivision (j) of Section 91527 or Section 91530. The resolution may, as the board deems advisable and in accordance with the provisions of this article, provide for, or authorize the execution of a loan agreement, the repayment obligation of which is evidenced by the bonds, providing for, or authorize the execution of an indenture providing for , all of the following:

- (a) The fixing and collection of revenues ; ;
- (b) The creation and maintenance of special funds, including reserve and sinking funds ; ;
- (c) Limitations on expenditures of bond proceeds ; ;
- (d) The procedure, if any, by which any contract represented by bonds may be amended or abrogated ; ;
- (e) The acts and omissions which shall constitute, and the rights and remedies available, in an event of default. ~~In such an~~ the event of default, the obligations of the authority may be enforced , ~~as appropriate, by mandamus, by the appointment of a receiver, by foreclosure or sale, by injunction, by specific performance, by equitable relief, or by any one or more of such remedies or any other remedy;~~ and under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.
- (f) Any additional matters authorized to be included in an indenture or which relate to the security, protection, or return of bondholders.

**Comment.** Section 91537 is amended to replace the former reference to various proceedings and remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The court on review may grant appropriate relief, whether mandatory, injunctive, or declaratory, preliminary or final, temporary or permanent, or equitable or legal. Code Civ. Proc. § 1123.730. See also Code Civ. Proc. § 1121.130 (injunctive relief ancillary).

### California Passenger Rail Financing Commission

#### **Gov't Code § 92308 (amended). Rights and remedies of bondholder**

92308. Any holder of bonds, notes, or other obligations issued under this title, or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by

any resolution authorizing the issuance of, or any trust agreement securing, the bonds, notes, or other obligations, may, either at law or in equity, by suit, action, mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder, or under the resolution or trust agreement, and may enforce and compel the performance of all duties required by this title, or by resolution or trust agreement, to be performed by the commission or by an officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges authorized by this title and required by the resolution or trust agreement to be fixed, established, and collected.

**Comment.** Section 92308 is amended to replace the former reference to enforcement proceedings by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

#### Department and Commission of Boating and Waterways

##### **Harb. & Nav. Code § 737 (amended). Conduct of proceedings; judicial review**

737. The proceedings and hearings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, ~~including the right of and are subject to judicial review as provided for in Section 11523 of the Government Code~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 737 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

#### Board of Pilot Commissioners

##### **Harb. & Nav. Code § 1183 (amended). Trial and judicial review**

1183. (a) Upon notification of nonrenewal of the license, a pilot or inland pilot is entitled to a trial and hearing in the same manner that other charges and accusations against pilots and inland pilots are tried.

(b) In every case of nonrenewal, suspension, or revocation of the license of a pilot or inland pilot for cause, the final decision of the board is subject to judicial review ~~in accordance with law, and the court shall exercise its independent judgment on the evidence~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 1183 is amended to make clear that judicial review of a decision of the board is under the judicial review provisions of the Code of Civil Procedure. The former provision for the court to exercise its independent judgment on the evidence is superseded by Sections 1123.420-1123.460 of the Code of Civil Procedure.

## San Diego Unified Port District

### **Harb. & Nav. Code Appendix 1 § 66 (amended). Enforcement of debt instruments**

66. Notwithstanding any other provisions of this act or any other law, the provisions of all ordinances, resolutions and other proceedings in the issuance by the district of any general obligation bonds, general obligation bonds with a pledge of revenues, revenue bonds, negotiable promissory notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of those bonds, notes, or evidences of indebtedness or liability and the provisions thereof, and the provisions of this act shall be enforceable against the district, any or all of its successors or assigns, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this act or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district or withdrawn therefrom shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of that bonded and other indebtedness and liabilities. To the extent provided in the proceedings for the authorization, issuance, and sale of any revenue bonds or general obligation bonds secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated or controlled by the district may be pledged, charged, assigned and have a lien thereon for the payment of those bonds as long as the bonds are outstanding, regardless of any change in ownership, operation, or control of those revenue-producing improvements, works, facilities, or property, and it shall be the duty of the successors or assigns to continue to maintain and operate those revenue-producing improvements, works, facilities, or property as long as the bonds are outstanding.

**Comment.** Section 66, *as amended* by Chapter 399 of the Statutes of 1996, is amended to replace the former reference to enforcement proceedings by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## Humboldt Bay Harbor, Recreation, and Conservation District

### **Harb & Nav. Code Appendix 2 § 66 (amended). Enforcement of debt instruments**

66. Notwithstanding any other provisions of this act or any other law, the provisions of all ordinances, resolutions and other proceedings in the issuance by the district of any general obligation bonds, general obligation bonds with a pledge of revenues, revenue bonds, negotiable promissory notes, or any and all evidences of indebtedness or liability and the provisions thereof and the provisions of this act shall be enforceable against the district, any or all of its successors or assigns, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this act or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district or withdrawn therefrom shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of ~~such~~ the dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of ~~such~~ the bonded and other indebtedness and liabilities. Except as may be otherwise provided in the proceedings for the authorization, issuance and sale of any revenue bonds or general obligation bonds secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities or property owned, operated or controlled by the district shall be pledged, charged, assigned and have a lien thereon for the payment of ~~such~~ the bonds as long as the same are outstanding, regardless of any change in ownership, operation or control of ~~such~~ the revenue-producing improvements, works, facilities or property and it shall, in ~~such~~ the later event or events, be the duty of the successors or assigns to continue to maintain and operate ~~such~~ the revenue-producing improvements, works, facilities or property as long as ~~such~~ the bonds are outstanding.

**Comment.** Section 66 is amended to replace the former reference to enforcement proceedings by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## State Department of Health Services (part 1)

### **Health & Safety Code § 443.37 (amended). (Operative July 1, 1997; operative until January 1, 1999) Administrative and judicial review**

443.37. (a) Any health facility affected by any determination made under this part by the office may petition the office for review of the decision. This petition

shall be filed with the office within 15 business days, or within such greater time as the office, with the advice of the commission, may allow, and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing shall be commenced within 60 calendar days of the date on which the petition was filed. The hearing shall be held before an employee of the office, an administrative law judge employed by the Office of Administrative Hearings, or a committee of the commission chosen by the chairperson for this purpose. If held before an employee of the office or a committee of the commission, the hearing shall be held in accordance with any procedures as the office, with the advice of the commission, shall prescribe. If held before an administrative law judge employed by the Office of Administrative Hearings, the hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The employee, administrative law judge, or committee shall prepare a recommended decision including findings of fact and conclusions of law and present it to the office for its adoption. The decision of the office shall be in writing and shall be final. The decision of the office shall be made within 60 calendar days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(c) ~~Judicial review of any final action, determination, or decision may be had by any party to the proceedings as provided in Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The decision of the office shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.~~

(d) The employee of the office, the administrative law judge employed by the Office of Administrative Hearings, the Office of Administrative Hearings, or the committee of the commission, may issue subpoenas and subpoenas duces tecum in a manner and subject to the conditions established by Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Subdivision (c) of Section 443.37 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former second sentence of subdivision (c) is continued in substance in Code of Civil Procedure Section 1123.430 (standard of review of fact-finding).

**Health & Safety Code § 1428 (amended). Contesting citation; penalties; notice of dismissal**

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes “AA,” “A,” or “B” citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director’s designee. If the director’s designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy

thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, for those citations issued after January 1, 1993, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1993, or within six months after the state department files its answer in the appeal, whichever is later. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in subdivision (c) of Section 14123 of the Welfare and Institutions Code. The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as ~~provided in Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing,

within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with subdivision (c) of Section 14123 of the Welfare and Institutions Code, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

- (1) The complainant and his or her designated representative.
- (2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" citation is issued for a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(l) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

**Comment.** Section 1428 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Health & Safety Code § 1550.5 (amended). Temporary suspension of license**

1550.5. The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall serve the licensee with the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the licensee with an accusation.

(a)(1) The department shall notify the licensee, upon service of an order of temporary license suspension, of the licensee's right to an interim hearing on the order. The department shall also provide the licensee with a form and appropriate information for the licensee's use in requesting an interim hearing. The department shall also notify the licensee, upon service, of the licensee's independent right to seek judicial review of the order by the superior court pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure on the issue of whether the department abused its discretion in issuing the order.

(2)(A) The licensee may request an interim hearing by mailing or delivering a written request to the Office of Administrative Hearings. The licensee shall mail or deliver the request to the address or location specified on the request form served with the order. The licensee shall mail or deliver the request within five days after service of the order. Upon receipt of a timely request for an interim hearing, the Office of Administrative Hearings shall set a hearing date and time which shall be within 10 working days of the office's receipt of the request. The Office of Administrative Hearings shall promptly notify the licensee of the date, time, and place of the hearing. The Office of Administrative Hearings, upon setting the interim hearing, shall post a public notice of the hearing at its regional office having jurisdiction over the location of the facility. The licensee's request for an interim hearing shall not stay the operation of the order.

(B) Nothing in this section precludes a licensee from proceeding directly to a full evidentiary hearing.

(3)(A) An interim hearing shall be held before an administrative law judge of the Office of Administrative Hearings. The interim hearing shall be held at the regional office of the Office of Administrative Hearings having jurisdiction over the location of the facility.

(B) The interim hearing on the order shall be limited to the issue of whether the department abused its discretion under this section in issuing the order. Evidence at the interim hearing shall be limited to the department's accusation and order of temporary license suspension. The interim hearing shall be reported or recorded pursuant to subdivision (d) of Section 11512 of the Government Code.

(4) The administrative law judge shall issue a verbal interim decision at the conclusion of the interim hearing which sustains or vacates the order. The administrative law judge shall issue a written interim decision within one working day following the conclusion of the interim hearing. The written interim decision shall be limited in scope to sustaining or vacating the order.

(5) The interim decision shall be subject to review only ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~ The department or the licensee may file a petition for that review. A petition for judicial review under Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall be heard by the court within 10 days of its filing and the court shall issue its judgment on the petition within 10 days of the conclusion of the hearing. The hearing on the interim decision shall be limited to the issue of whether the department abused its discretion under this section in issuing the order of temporary license suspension.

(6) The department may proceed with the accusation as otherwise provided by this section and Section 1551 notwithstanding an interim decision by the administrative law judge which vacates the order of temporary license suspension.

(7) The department shall be deemed to have abused its discretion in issuing an order of temporary license suspension only if the department's accusation and

order of temporary license suspension fail to allege facts and conditions showing that issuance of the order is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety.

(b) Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits, unless it is earlier vacated by interim decision of the administrative law judge. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

**Comment.** Section 1550.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision for review in superior court is continued in substance in Code of Civil Procedure Section 1123.510.

**Health & Safety Code § 1793.15 (amended). Recording notice of lien**

1793.15. (a) When necessary to secure the performance of all obligations of the applicant or provider to transferors, the department may record a notice or notices of lien on behalf of the transferors. From the date of recording, the lien shall attach to all real property owned or acquired by the provider during the pendency of the lien, provided ~~such~~ the property is not exempt from the execution of a lien and is located within the county in which the lien is recorded. The lien shall have the force, effect, and priority of a judgment lien.

(b) The department shall file a release of the lien if the department deems the lien no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

(c) The applicant or provider may appeal to the department from a refusal of a request for a release of the lien.

(d) The decision shall be subject to court review ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, upon petition of the applicant or provider filed within 30 days of service of the decision.~~

**Comment.** Section 1793.15 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision for filing within 30 days of service of the decision is superseded by Code of Civil Procedure Section 1123.640.

Board of Trustees, Mosquito Abatement District

**Health & Safety Code § 2280.1 (amended). Judicial review**

2280.1. Any judicial review of administrative procedure provided for in this chapter shall be ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 2280.1 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Health & Safety Code § 2861.5 (amended). Judicial review**

2861.5. Any judicial review of administrative procedure provided for in this chapter shall be ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure.

**Comment.** Section 2861.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Housing and Community Development (part 2)

**Health & Safety Code § 17980.8 (amended). (First of two) Abatement of nuisance**

17980.8. Notwithstanding any other provision of law, if a determination that an unsafe or substandard condition exists in any building, or upon the lot upon which it is situated, has been made in an administrative proceeding conducted under this part, including any code incorporated by Section 17922, the enforcement agency may abate the nuisance as provided in this part or exercise any other authority conferred upon it by this part, subject only to the exclusive remedy of the owner to challenge the administrative determination ~~pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure. ~~The court may exercise its independent judgment on the evidence to determine whether the findings are supported by the weight of the evidence.~~ This section shall apply only to administrative proceedings commenced on or after January 1, 1990.

**Comment.** Section 17980.8 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former penultimate sentence of Section 17980.8 is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

**Health & Safety Code § 18024.4 (amended). Citation final; judicial review**

18024.4. If, within 30 days from receipt of the citation, the person cited fails to notify the department that he or she intends to appeal the citation, the citation shall be deemed final. However, the person cited may obtain judicial review ~~in accordance with Section 11523 of the Government Code under Title 2 (commencing with Section 1120) of Part 3~~ of the Code of Civil Procedure. The person cited shall receive court costs and attorney's fees if he or she prevails. The 30-day period may be extended by the department for good cause.

**Comment.** Section 18024.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Department of Health Services (part 2)

**Health & Safety Code § 25149 (amended). Endangerment to health and environment**

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil

Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.

(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655.

(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.

(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, which are developed after considering the suggestions on study design and methodology made by interested parties and which are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the department before beginning the study.

(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 which requires one or both of the following:

(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.

(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.

(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign an administrative law judge to conduct the hearing, pursuant to this subdivision.

(1) After an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign an administrative law judge to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with Article 8 (commencing with Section 11435.05 ) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11511 to 11515, inclusive, of, the Government Code. The administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.

(3) The director may adopt the proposed decision of the administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review ~~in accordance with Section 11523 of the Government Code~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 25149 is amended to revise the reference to the judicial review provisions. See Code Civ. Proc. §§ 1120-1123.950.

**Health & Safety Code § 25187 (amended). Order specifying schedule for compliance**

25187. (a)(1) Whenever the department, a local health officer authorized pursuant to Section 25187.7, or a local public officer designated by the director pursuant to subdivision (a) of Section 25180 and authorized pursuant to Section 25187.7 determines that any person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this

chapter, Chapter 6.8 (commencing with Section 25300) of this division, or Article 3 (commencing with Section 114990) of Chapter 8 of Part 9 of Division 104, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) of this division, or Article 3 (commencing with Section 114990) of Chapter 8 of Part 9 of Division 104, or the department, an authorized local health officer, or an authorized local public officer determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility, the department, authorized local health officer, or authorized local public officer may issue an order specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300), except in any of the following circumstances:

(A) Where the person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to Chapter 6.8 (commencing with Section 25300).

(B) Where the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of the person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) Where the person who is responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of the person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) Where the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300).

(E) Where an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to

address the required cleanup of the release pursuant to Chapter 6.8 (commencing with Section 25300).

(F) Where the hazardous waste facility is owned or operated by the federal government.

(2) The authority granted under this section to a unified program agency is limited to the issuance of orders to correct releases from, and violations of the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404 occurring at, a unified program facility within the jurisdiction of the CUPA, and is subject to the provisions of Section 25404.1.

(A) Notwithstanding paragraph (1) and Section 25187.7, within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to issue orders under this section to correct releases from, and violations the requirements of this chapter listed to paragraph (1) of subdivision (c) of Section 25404 occurring at, a unified program facility.

(B) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this section and Section 25187.1.

(C) The department shall adopt regulations to implement this paragraph and paragraph (2) of subdivision (a) of Section 25187.1. The regulations shall include, but not be limited to, all of the following requirements:

(i) A requirement that the unified program agency shall consult with the district attorney for the county on the development of policies to be followed by the unified program agency in exercising the authority delegated pursuant to this section and Section 25187.1.

(ii) Provisions to ensure coordinated and consistent application of this section and Section 25187.1 when both the department and the unified program agency have issued or will be issuing orders under one or both of these sections at the same facility.

(iii) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(iv) A requirement that the unified program agency have the ability to represent itself in administrative appeal hearings.

(v) Minimum training requirements for staff of the unified program agency relative to this section and Section 25187.1.

(vi) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and Section 25187.1, if the department finds that the unified program agency is not exercising that authority in a manner consistent with the provisions of this chapter and Chapter 6.11 (commencing with Section 25404) and the regulations adopted pursuant thereto.

(3) An order issued pursuant to this section shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects thereof, and any other

necessary remedial action. An order issued pursuant to this section that requires corrective action at a hazardous waste facility shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment. The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department, authorized unified program agency, authorized local health officer, or authorized local public officer determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The department, authorized unified program agency, authorized local health officer, or authorized local public officer also may include any more stringent requirement that the department, authorized unified program agency, authorized local health officer, or authorized local public officer determines is necessary or appropriate to protect water quality. Persons who are subject to an order pursuant to this section include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(4) In an order proposing a penalty pursuant to this section, the department authorized unified program agency, authorized local health officer, or authorized local public officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

(b) For purposes of subdivision (a), "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to subdivision (a) shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing.

(d)(1) Any person served with an order pursuant to subdivision (c) who has been unable to resolve any violation or deficiency on an informal basis with the department, authorized unified program agency, authorized local health officer, or authorized local public officer may, within 15 days after service of the order,

request a hearing by filing with the department, authorized unified program agency, authorized local health officer, or authorized local public officer a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(2) If a person served with an order pursuant to subdivision (c) chooses to resolve the content, terms, or conditions of the order directly with the department, authorized unified program agency, authorized local health officer, or authorized local public officer and does not file an administrative or judicial appeal, the person may request, and the department, authorized unified program agency, authorized local health officer, or authorized local public officer shall prepare, a written statement, which the department, authorized unified program agency, authorized local health officer, or authorized local public officer shall prepare, a written statement, that the department, authorized unified program agency, authorized local health officer, or authorized local public officer shall amend into the order, that explains the violation and the penalties applied, including the nature, extent, and gravity of the violations, and that includes a brief description of any mitigating circumstances and any explanations by the respondent. Any amendment to include the written statement prepared pursuant to this subdivision does not constitute a new order and does not create new appeal rights.

(e) Except as provided in subdivision (f), any hearing requested under subdivision (d) shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department, authorized unified program agency, authorized local health officer, or authorized local public officer shall have all the authority granted to an agency by those provisions.

(f) Any provision of an order issued under subdivision (a), except the imposition of an administrative penalty, shall take effect upon issuance by the department or unified program agency if the department or unified program agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the department under subdivision (e). However, in the event that the department or unified program agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the department or unified program agency. A request for a hearing shall not stay the effect of the

order as a whole pending a decision by the ~~hearing officer~~ administrative law judge under subdivision (e). Any order issued after a hearing requested under subdivision (d) shall take effect upon issuance by the department or unified program agency.

(g) A decision issued pursuant to this section may be reviewed by the court pursuant to ~~Section 11523 of the Government Code. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the department, authorized unified program agency, authorized local health officer, or authorized local public officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

(h) Except as otherwise provided in subdivisions (i) and (j), all administrative penalties collected under this section shall be placed in a separate subaccount in the Hazardous Waste Control Account and shall be available for expenditure by the department only upon appropriation by the Legislature.

(i) Fifty percent of the penalties collected from actions brought by unified program agencies, local health officers, or designated local public officers pursuant to this section shall be paid to the city or county whose unified program agency, local health officer, or designated local public officer imposed the penalty, and shall be deposited into a special account that may be expended to fund the activities of the unified program agency, local health officer, or designated local public officer in enforcing this chapter pursuant to Section 25180, after the director determines that the local agency enforcement of this section is fair and reasonable.

(j) Fifty percent of the penalties collected from actions brought by unified program agencies, local health officers, or designated local public officers pursuant to this section shall be paid to the department and deposited in the Hazardous Waste Control Account for expenditure by the department, upon appropriation by the Legislature, in connection with activities of unified program agencies, local health officers, or designated local public officers.

**Comment.** Section 25187, as amended by Section 234 of Chapter 1023 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former second sentence of subdivision (g) is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The language formerly in subdivision (g) that a petition for a writ of mandate does not stay corrective action or penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

#### **Health & Safety Code § 25202.7 (amended). Judicial review**

25202.7. Any decision of the department pursuant to either Section 25202.5 or Section 25202.6 shall be subject to review by a court of competent jurisdiction as ~~provided in Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part

~~3~~ of the Code of Civil Procedure and shall be upheld if the court finds the decision is supported by substantial evidence.

**Comment.** Section 25202.7 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language requiring the court to uphold the decision of the department if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

**Health & Safety Code § 25231 (amended). Judicial review**

25231. A decision of the director made pursuant to Section 25229 shall be reviewable pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 25231 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Health & Safety Code § 25233 (amended). Application for variance**

25233. (a) Any aggrieved person may apply to the department for a written variance from a land use restriction, including the requirements set forth in subdivision (a) or (b) of Section 25232. Any application shall contain sufficient evidence for the department to issue a notice for a hearing. The notice shall contain both of the following:

(1) A statement of all of the following that apply:

(A) Land use restrictions have been imposed on the land.

(B) A hearing is pending on the land.

(C) The land has been designated a hazardous waste property or border zone property.

(2) A statement of who is applying for a variance, the proposed variance, and a statement of the reasons in support of the granting of a variance.

(b) The procedures for the conducting of the hearing specified in subdivision (a) are those set forth in this article. No person shall make a subsequent application pursuant to this section within 18 months of a final decision on an application by the department. A person applying for a variance pursuant to this section shall pay the department for all costs incurred by the department relating to the application.

(c) The applicant shall have the burden of proving at the hearing that the variance will not cause or allow any of the following effects associated with hazardous waste or extremely hazardous waste:

(1) The creation or increase of significant present or future hazards to public health.

(2) Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.

(3) Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public.

(d) If, upon the preponderance of the testimony taken, the director is of the opinion that the variance should be granted, the director shall issue and cause to

be served his or her decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other persons who were permitted to intervene in the proceedings. The findings of fact shall include the exact nature of the proposed variance and the reasons in support of the granting of the variance.

(e) If the director is of the opinion that the variance should not be granted, the director shall issue and cause to be served his or her findings of fact in support of the denial on the parties mentioned in subdivision (c).

(f) The department shall record within 10 days any final decision made by the director pursuant to this section as provided in Section 25235.

(g) A decision of the director made after a hearing held pursuant to this section shall be reviewable pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure ~~and shall be upheld if the court finds that it is supported by substantial evidence.~~

**Comment.** Section 25233 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language of subdivision (g) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

**Health & Safety Code § 25234 (amended). Application to remove land use restriction**

25234. (a) Any aggrieved person may apply to the department to remove a land use restriction, including a designation that the land is a hazardous waste property or a border zone property on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. No person shall make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department pursuant to this section shall pay the department all costs incurred by the department relating to the application. Any application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste which caused the land to be restricted or designated has since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste which caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) Any aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25235.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure ~~and shall be upheld if the court finds that it is supported by substantial evidence.~~

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, including the designation of a hazardous waste property or a border zone property, the easement, covenant, restriction, or servitude imposed on the land created by Section 25222.1, 25230, or 25355.5 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and which shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude, and in the grantor index in the name of the department.

**Comment.** Section 25234 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provision for substantial evidence review. Standards of review are prescribed in Code of Civil Procedure Sections 1123.420-1123.460.

**Health & Safety Code § 25356.1 (amended). (Operative until July 1, 1998) Remedial action plans; judicial review**

25356.1. (a) For purposes of this section, “regional board” means a California regional water quality control board and “state board” means the State Water Resources Control Board.

(b) Except as provided in subdivision (h), the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(c) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for any site not listed pursuant to Section 25356, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(d) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.61 et seq.), and any

amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or the regional board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(e) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or prepared by, the department or the regional board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (d) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those

parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(f) After complying with subdivision (e), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

(g)(1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan ~~by filing a petition for writ of mandate pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~ within 30 days after the final remedial action plan is issued by the department or the regional board. Any other person who has the right to seek judicial review of the final remedial action plan ~~by filing a petition for writ of mandate pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~ shall do so within one year after the final remedial action plan is issued. No action may be brought by a potentially responsible party to review the final remedial action plan if the petition for ~~writ of mandate~~ review is not filed within 30 days of the date that the final remedial action plan was issued. No action may be brought by any other person to review the final remedial action plan if the petition for ~~writ of mandate~~ review is not filed within one year of the date that the final remedial action plan was issued. The ~~filing of a petition for writ of mandate to review the final remedial action plan~~ shall not stay any removal or remedial action specified in the final plan.

~~(2) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.~~

(3) This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(h)(1) This section does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than one million dollars (\$1,000,000). The department or a regional board shall prepare or approve a removal action workplan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than one million dollars (\$1,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment which may include conducting a public meeting on proposed removal actions.

(2) A remedial action plan is not required pursuant to subdivision (b) if the site is listed on the National Priority List by the Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (d) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section 25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars (\$2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions which are necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by Section 9601(23) of Title 42 of the United States Code.

(5) Paragraph (2) of this subdivision does not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(i) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional board pursuant to this section.

**Comment.** Subdivision (g) of Section 25356.1 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provision for substantial evidence review which is continued in substance in Code of Civil Procedure Section 1123.430. The language formerly in subdivision (g) that the filing of a petition for a writ of mandate does not stay removal or remedial action is continued in substance in Code of Civil Procedure Section 1123.720(a).

**Health & Safety Code § 25356.8 (amended). (Operative until July 1, 1998) Judicial review**

25356.8. (a) Judicial review of the arbitration decision on the apportionment of liability is limited to a showing of fraud by a party to the arbitration proceeding or an abuse of discretion by the panel, or both.

(b) Judicial review of a decision by the department or the regional water quality control board modifying the remedial action plan pursuant to subdivision (b) of Section 25356.6 shall be conducted pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure and the standard of review shall be the same as that specified in subdivision (f) of Section 25356.1.

**Comment.** Subdivision (b) of Section 25356.8 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provision prescribing the standard of review which is continued in substance in Code of Civil Procedure Section 1123.430.

**Health & Safety Code § 25398.10 (amended). Arbitration panel**

25398.10. (a) The Director of Environmental Health Hazard Assessment shall convene an arbitration panel, if a timely petition is filed with the director, for purposes of resolving all disputes with any responsible person concerning any of the following:

(1) The remedial action plan developed pursuant to Section 25398.6, including disputes regarding remedy selection, other technical issues, conditions of approval, or any other element of the plan.

(2) The department's proposed apportionment of liability pursuant to Section 25398.8.

(3) Any proposed de minimis settlements pursuant to Section 25398.9.

(4) The department's approval or denial of a change in land use pursuant to Section 25398.7.

(5) The department's approval or denial of a certificate of completion pursuant to Section 25398.15, as provided in subdivision (b) of Section 25398.15.

(b)(1) Petitions for disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) shall be filed within 60 days from the date that the notice of approval of the remedial action plan is issued, or from the date that the responsible person or persons preparing the remedial action plan notify the department in writing, by appropriate means, of the responsible person or person's rejection of a notice of deficiency. Within 10 days of the department's approval of the remedial action plan or receipt of a notice of a rejection of a notice of deficiency for the remedial action plan, the department shall provide notice in writing, by appropriate means, of its approval, or receipt of the notice of rejection, to all responsible persons for the site and to the public. The notice shall indicate the rights of the parties to file petitions for arbitration of the disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) and the deadline for the filing of a petition. Petitions for arbitration of disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) may be made by any responsible person. Petitions for arbitration of disputes concerning the matter specified in paragraph (1) of subdivision (a) may also be filed by the affected community, and petitions for arbitration of disputes concerning the matters specified in paragraphs (2) and (3) of subdivision (a) may be filed by any member of the public if orphan shares that are to be paid from the trust fund are at issue.

(2) Petitions for the arbitration of all disputes concerning the matters specified in paragraphs (4) and (5) of subdivision (a) may be made by any responsible person for the site, the affected community, or the public, and shall be made prior to the time that the action in dispute becomes final.

(3) Prior to submitting a petition for arbitration, the responsible persons shall make all reasonable efforts to resolve the dispute.

(4) If one or more petitions for arbitration have been filed for any combination of review of the remedial action plan, apportionment of liability, or de minimis

settlements, the arbitration panel shall review all of these petitions in a consolidated hearing. The arbitration panel shall minimize the need for hearings on all other issues by consolidating hearings in all cases where reasonably possible.

(5) The arbitrators shall be selected as provided in subdivision (d) of Section 25356.2.

(c) All the provisions of Sections 25356.2, 25356.3, 25356.4 and 25356.6 apply to arbitration proceedings conducted pursuant to this section, except for all of the following:

(1) The arbitration panel shall apply the factors and standards for liability apportionment set forth in subdivision (c) of Section 25398.8, instead of those set forth in subdivision (c) of Section 25356.2.

(2) The provisions of subdivision (a) of Section 25356.3 and the provisions of subdivisions (c) and (e) of Section 25356.4 shall not apply.

(3) The arbitrators shall be bound by, and shall apply, the requirements and standards set forth in this chapter and Chapter 6.65 (commencing with Section 25260) that are applicable to the dispute that is the subject of the arbitration.

(4) The arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

(d) The arbitration panel shall hold a public hearing on any matter presented to the panel for evaluation, shall take all evidence presented, shall keep a record of the proceedings, including all testimony and evidence presented, and shall have discretion in the determination of facts. All findings and decisions of the panel shall be supported by substantial evidence in light of the whole record. The response action for which the arbitration panel has been requested to act pursuant to this section shall not be stayed during the pendency of the arbitration proceedings. Notice of the arbitration panel's decision shall be provided in writing, by appropriate means, within five days from the date that the arbitration panel has reached a decision, to the responsible persons, the affected community, the public, and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.

(e) The department, any member of the advisory committee described in Section 25263, or, for purposes of appealing the approval of a remedial action plan by the arbitration panel, any member of the affected community, may seek judicial review of a decision of the arbitration panel ~~by filing a petition for a writ of mandate pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to those entities or persons.~~ Any person authorized to petition for arbitration may also seek judicial review of a decision of the arbitration panel, concerning any matter for which the person is authorized pursuant to subdivision (b) to submit a petition for arbitration, ~~by filing a petition for writ of mandate pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil~~

~~Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to that person. No person may seek judicial review of a matter that is subject to arbitration, if requested, that has not been first presented to an arbitration panel.~~

(f) Except for acts of recklessness, gross negligence, fraud, deceit, or other criminal activity, the arbitrators are immune from liability for any actions taken in their role as arbitrators.

(g) Response costs incurred by the state because of an arbitration proceeding shall be paid as follows:

(1) By the responsible person or responsible persons who are parties to the enforceable agreement described in subdivision (b) of Section 25398.2 if either of the following occurs:

(A) The arbitration proceeding or judicial review is initiated by one of those participating responsible persons, the affected community, or a member of the public.

(B) Judicial review is sought by the department or a member of the advisory committee described in Section 25263.

(2) By the responsible person or responsible persons who initiated the arbitration proceeding if the responsible person or responsible persons are not parties to the enforceable agreement described in subdivision (b) of Section 25398.2.

**Comment.** Section 25398.10, *as amended* by Chapter 632 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

### Administering Agency of City, County, or Fire District on Handling Hazardous Materials

#### **Health & Safety Code § 25514.6 (amended). Complaint by administering agency**

25514.6. (a) Notwithstanding Section 25516.1, the administering agency may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 13009.6, 25514 or 25514.5. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing. If the party waives the right to a hearing, the administering agency shall issue an order setting liability in the amount proposed in the complaint unless the administering agency and the party have entered into a settlement agreement, in which case the administering agency shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has waived the right to a hearing or where the administering agency and the party have entered

into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) After conducting any hearing required under this section, the administering agency shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

(c) Orders setting civil liability issued under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

~~(d) Within 30 days after service of a copy of a decision issued by the administering agency, any A person so served may file with the superior court a petition for writ of mandate for judicial review of the decision. Any person who fails to file the petition within this 30-day period the time prescribed by Section 1123.640 of the Code of Civil Procedure may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the administering agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

(e) This section applies only to an administering agency which has adopted a written policy to carry out this section.

**Comment.** Section 25514.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (d) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (d) requiring the court to uphold the decision of the agency if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (d) that the filing of a petition for a writ of mandate does not stay accrual of penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

### Redevelopment Agencies (part 1)

#### **Health & Safety Code § 33660 (amended). Rights and remedies of obligee**

33660. In addition to all other rights which may be conferred on ~~him~~ the obligee, and subject only to any contractual restrictions binding upon ~~him~~ the obligee, an obligee may by a proceeding under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure:

(a) ~~By mandamus, suit, action, or proceeding, compel~~ Compel the agency and its members, officers, agents, or employees to perform each and every term, provision, and covenant contained in any contract of the agency with or for the benefit of the obligee, and require the carrying out of any or all such covenants and agreements of the agency and the fulfillment of all duties imposed upon it by this part.

(b) ~~By suit, action, or proceeding in equity, enjoin~~ Enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee.

**Comment.** Section 33660 is amended to replace the former reference to various enforcement proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. [Should enforcement proceedings other than mandamus be replaced?]

**Health & Safety Code § 33781 (amended). Enforcement of rights of holders and trustees**

33781. Any holder of revenue bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee or trustees appointed pursuant to any resolution authorizing the issuance of ~~such~~ the revenue bonds, except to the extent the rights thereof may be restricted by the resolution authorizing the issuance of the revenue bonds, may, either at law or in equity, by suit, action, ~~mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ or other proceedings, protect or enforce any and all rights specified in the laws of this state or in ~~such~~ the resolution, and may enforce and compel the performance of all duties required by this chapter or by ~~such~~ the resolution to be performed by the agency or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of ~~such~~ the resolution to be fixed, established, and collected.

**Comment.** Section 33781 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Housing Authorities (part 1)

**Health & Safety Code § 34362 (amended). Amending or abrogating contract**

34362. An authority may prescribe procedure by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds whose holders are required to consent, and the manner in which consent may be given. The provisions of this chapter and any resolution and any mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust shall constitute a contract with the holder or holders of the bonds and continue in effect until the principal of, the interest on, and the redemption premiums, if any, on the bonds so issued have been fully paid or provision made therefor, and the

duties of the authority and its officers under this chapter and any resolution and any mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust shall be enforceable as provided therein by any bondholder by mandamus a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, foreclosure of any such mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust, or other appropriate suit, action, or proceeding in any court of competent jurisdiction; provided, the resolution or any mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust under which the bonds are issued may provide that all such remedies and rights to enforcement may be vested in a trustee (with full power of appointment) for the benefit of all the bondholders, and that the trustee shall be subject to the control of ~~such~~ the number of holders or owners of any outstanding bonds as specified in the resolution.

**Comment.** Section 34362 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

### Business, Transportation and Housing Agency

#### **Health & Safety Code § 35823 (amended). Finality of decision; hearing; judicial review**

35823. The decision of the secretary shall be final unless, within ten days from the date of receipt thereof, the complainant or financial institution files a written request with the secretary for a formal administrative hearing. Upon receipt of ~~such a~~ the written request, the secretary shall file a copy thereof with the Office of Administrative Hearings. Within 20 days of receipt of the copy of ~~such~~ the request, the Office of Administrative Hearings shall commence a hearing on the merits pursuant to the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, except that the decision of the hearing officer shall be a final decision and binding upon the secretary. The decision shall be in accordance with the provisions of Section 35822 and shall be rendered within 45 days of receipt of the copy of the request for a hearing by the Office of Administrative Hearings. The secretary shall represent the complainant at ~~such~~ the hearing if the secretary's decision rendered pursuant to Section 35822 was in favor of the complainant.

Judicial review may be obtained by the complainant or the financial institution ~~by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. In any such judicial proceeding, the court may exercise its independent judgment on the evidence included in the record of the administrative hearing and may additionally consider evidence which was improperly excluded by the hearing officer and any other relevant evidence not~~

~~included in the record of the administrative hearing which the court finds the offering party could not, in the exercise of reasonable diligence, have produced at the administrative hearing. The court may in its discretion award costs or reasonable attorney fees, or both, to the complainant if the complainant is the prevailing party, without regard to whether such the judicial action proceeding is brought by the complainant or by the financial institution.~~

**Comment.** Section 35823 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former penultimate sentence of Section 35823 is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standard of review) and 1123.850 (new evidence on judicial review).

Cities and Counties (part 2), and Redevelopment Agencies (part 2)

**Health & Safety Code § 37646 (amended). Actions to protect or enforce rights**

37646. Any holder of bonds issued under the provisions of this part or any of the coupons appertaining thereto, and the trustee or trustees appointed pursuant to any resolution authorizing the issuance of ~~such the~~ the bonds, except to the extent the rights thereof may be restricted by the resolution authorizing the issuance of the bonds, may, either at law or in equity, by suit, action, ~~mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ or other proceedings, protect or enforce any and all rights specified in the laws of the state or in ~~such the~~ the resolution, and may enforce and compel the performance of all duties required by this part or by ~~such the~~ the resolution to be performed by the local agency or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of ~~such the~~ the resolution to be fixed, established, and collected.

**Comment.** Section 37646 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Cities and Counties (part 3), Redevelopment Agencies (part 3),  
and Housing Authorities (part 2)

**Health & Safety Code § 37936 (amended). Actions to protect or enforce rights**

37936. Any holder of bonds issued under the provisions of this part or any of the coupons appertaining thereto, and the trustee or trustees appointed pursuant to any resolution authorizing the issuance of ~~such the~~ the bonds, except to the extent the rights thereof may be restricted by the resolution authorizing the issuance of the bonds, may, either at law or in equity, by suit, action, ~~mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ or other proceedings, protect or enforce any and all rights specified in the laws of the state or in ~~such the~~ the resolution, and may enforce and compel the performance of all duties required by this part or by ~~such the~~ the

resolution to be performed by the local agency or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of ~~such~~ the resolution to be fixed, established, and collected.

**Comment.** Section 37936 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

### Air Pollution Control Hearing Boards

#### **Health & Safety Code § 40864 (amended). Judicial review**

40864. (a) ~~Judicial review may be had of a decision of a hearing board by filing a petition for a writ of mandate in accordance with Section 1904.5 , under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Except as otherwise provided in this section, any such petition shall be filed within 30 days after the decision has been mailed pursuant to Section 40860. The right to petition for review shall not be affected by the failure to seek a rehearing before the hearing board.~~

~~(b) The complete record of the proceedings, or such the parts thereof as are designated by the petitioner, shall be prepared by the hearing board and shall be delivered to the petitioner within 30 days after a request therefor by him the petitioner, upon payment of the fee specified in Section 69950 of the Government Code for the transcript, the cost of preparation of other portions of the record, and for certification thereof.~~

~~(c) The complete record includes the pleadings, all notices and orders issued by the hearing board, any proposed decision by the hearing board, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence, and any other papers in the case.~~

~~(d) Where the petitioner, within 10 days after the last day on which a rehearing can be ordered, requests the hearing board to prepare all or any part of the record, the time within which a petition may be filed shall be extended until five days after its delivery to him. The hearing board may file with the court the original of any document in the record in lieu of a copy thereof.~~

**Comment.** Section 40864 is amended to replace the former reference to judicial review by writ of mandate with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The time limit formerly in subdivision (a) is superseded by Code of Civil Procedure Section 1123.650. Former subdivision (b) is superseded by Code of Civil Procedure Sections 1123.830 (preparation of administrative record) and 1123.910 (fee for preparation of record). Former subdivision (c) is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record). The former first sentence of subdivision (d) (extension of time after request for record) is superseded by Code of Civil Procedure Section 1123.650(b)(2).

## State Air Resources Board

### **Health & Safety Code § 42316 (amended). Mitigation of impact of water activities**

42316. (a) The Great Basin Air Pollution Control District may require the City of Los Angeles to undertake reasonable measures, including studies, to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water and may require the city to pay, on an annual basis, reasonable fees, based on an estimate of the actual costs to the district of its activities associated with the development of the mitigation measures and related air quality analysis with respect to those activities of the city. The mitigation measures shall not affect the right of the city to produce, divert, store, or convey water and, except for studies and monitoring activities, the mitigation measures may only be required or amended on the basis of substantial evidence establishing that water production, diversion, storage, or conveyance by the city causes or contributes to violations of state or federal ambient air quality standards.

(b) The city may appeal any measures or fees imposed by the district to the state board within 30 days of the adoption of the measures or fees. The state board, on at least 30 days' notice, shall conduct an independent hearing on the validity of the measures or reasonableness of the fees which are the subject of the appeal. The decision of the state board shall be in writing and shall be served on both the district and the city. Pending a decision by the state board, the city shall not be required to comply with any measures which have been appealed. Either the district or the city may bring a judicial ~~action~~ proceeding to challenge a decision by the state board under this section. ~~The action proceeding shall be brought pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure and shall be filed within 30 days of service of the decision of the state board.~~

(c) A violation of any measure imposed by the district pursuant to this section is a violation of an order of the district within the meaning of Sections 41513 and 42402.

(d) The district shall have no authority with respect to the water production, diversion, storage, and conveyance activities of the city except as provided in this section. Nothing in this section exempts a geothermal electric generating plant from permit or other district requirements.

**Comment.** Section 42316 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (b) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640.

### **Health & Safety Code § 44011.6 (amended). Test for smoke emissions; penalties; administrative hearing**

44011.6. (a) The use of a heavy-duty motor vehicle that emits excessive smoke is prohibited.

(b)(1) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections.

(2) The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles. However, visual or functional inspection procedures for heavy-duty gasoline motor vehicles shall not be more stringent than those prescribed by the department for heavy-duty gasoline motor vehicles subject to biennial inspection pursuant to Section 44013.

(3) The chairperson of the state board shall appoint an ad hoc advisory committee which shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or heavy-duty diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this subdivision and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

(c) Any smoke testing procedures or smoke measuring equipment, including any meter that measures smoke opacity or density and any recorder that stores or records smoke opacity or density measurements, used to test for compliance with this section and regulations adopted pursuant to this section, shall produce consistent and repeatable results. The requirements of this subdivision shall be satisfied by the adoption of Society of Automotive Engineers recommended practice J 1667, "Snap-Acceleration Smoke Test Procedures for Heavy-Duty Diesel Powered Vehicles."

(d)(1) The smoke test standards and procedures adopted and implemented pursuant to this section shall be designed to ensure that no engine will fail the smoke test standards and procedures when the engine is in good operating condition and is adjusted to the manufacturer's specifications.

(2) In implementing this section, the state board shall adopt regulations that ensure that there will be no false failures or that ensure that the state board will remedy any false failures without any penalty to the vehicle owner.

(e) The state board shall enforce the prohibition against the use of heavy-duty motor vehicles that are determined to have excessive smoke emissions and shall enforce any regulation prohibiting the use of a heavy-duty motor vehicle determined to have other emissions-related defects, using the test procedure established pursuant to this section.

(f) The state board may issue a citation to the owner or operator for any vehicle in violation of this section. The regulations may require the operator of a vehicle to submit to a test procedure adopted pursuant to subdivision (b) and this

subdivision, and may specify that refusal to so submit is an admission constituting proof of a violation, and shall require that, when a citation has been issued, the owner of a vehicle in violation of the regulations shall, within 45 days, correct every deficiency specified in the citation.

(g) The department may develop criteria for one or more classes of smog check stations capable of determining compliance with regulations adopted pursuant to this section and may authorize those stations to issue certificates of compliance to vehicles in compliance with the regulations. The department may contract for the operation of smog check stations for heavy-duty motor vehicles pursuant to this subdivision, and only heavy-duty motor vehicles may be inspected at those stations.

(h) In addition to the corrective action required by this section, the owner of a motor vehicle in violation of this section is subject to a civil penalty of not more than one thousand five hundred dollars (\$1,500) per day for each day that the vehicle is in violation. The state board may adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner. However, the schedule of reduced civil penalties shall not apply where there have been repeated incidents of emissions control system tampering. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the Vehicle Inspection and Repair Fund, when appropriated by the Legislature, shall be available to the state board and the Department of the California Highway Patrol for the conduct of intermittent roadside inspections of heavy-duty motor vehicles pursuant to this section.

(i) Following the adoption of regulations pursuant to this section, the state board may commence inspecting heavy-duty motor vehicles. With the concurrence of the Department of the California Highway Patrol, these inspections may be conducted in conjunction with the safety and weight enforcement activities of the Department of the California Highway Patrol, or at other locations selected by the state board or the Department of the California Highway Patrol. Inspection locations may include private facilities where fleet vehicles are serviced or maintained. The state board and the Department of the California Highway Patrol may conduct these inspections either cooperatively or independently, and the state board may contract for assistance in the conduct of these inspections.

(j) The state board shall inform the Department of the California Highway Patrol whenever a vehicle owner cited pursuant to this section fails to take a required corrective action or to pay a civil penalty levied pursuant to subdivisions (h) and (i) in a timely manner. Following notice and opportunity for an administrative hearing pursuant to subdivision (m), the state board may request the Department of the California Highway Patrol to remove the vehicle from service and order the vehicle to be stored. Upon notification from the state board of payment of any civil penalties imposed under subdivision (h) and storage and related charges, the

vehicle shall be released to the owner or designee. Upon release of the vehicle, the owner or designee shall correct every deficiency specified in any citation to that owner with respect to the vehicle.

(k) The state board, in consultation with the Department of the California Highway Patrol, shall prepare and submit to the Legislature a report on the smoke emissions enforcement program conducted under this section, including, but not limited to, its assessment of the effectiveness of the program, the impact of the program on the operations of the Department of the California Highway Patrol, and its recommendations for changes in, alternatives to, or termination of, the program.

(l) In addition to the corrective action required by subdivision (f), and in addition to the civil penalty imposed by subdivision (h), the owner of a motor vehicle cited by the state board pursuant to this section shall pay a civil penalty of three hundred dollars (\$300) per citation; except that this penalty shall not apply to the first citation for any schoolbus. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in the Diesel Emission Reduction Fund, when appropriated by the Legislature, shall be available to the State Energy Resources Conservation and Development Commission for research, development, and demonstration programs undertaken pursuant to Section 24617 of the Public Resources Code.

(m) The state board shall adopt regulations that afford an owner cited under this section an opportunity for an administrative hearing consistent with, but not limited to, all of the following: (1) any owner cited under this section may request an administrative hearing within 45 days following either personal receipt or certified mail receipt of the citation; (2) if the owner fails to request an administrative hearing within 45 days, the citation shall be deemed a final order and not subject to review by any court or agency; (3) if the owner requests an administrative hearing and fails to seek judicial review by administrative mandamus pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within 60 days after the mailing of the administrative hearing decision, the decision shall be deemed a final order and not subject to review by any other court or agency; and (4) the 45-day period may be extended by the administrative hearing officer for good cause.

(n) Following exhaustion of the review procedures provided for in subdivision (m), the state board may apply to the Superior Court of Sacramento County for a judgment in the amount of the civil penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

**Comment.** Section 44011.6, *as amended by* Chapter 292 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (m) prescribing the time limit for judicial review is superseded by Code of Civil Procedure Section 1123.640.

## California Pollution Control Financing Authority

### **Health & Safety Code § 44554 (amended). Rights and remedies of bondholder**

44554. Any holder of bonds, notes, or other obligations issued under the provisions of this division or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or ~~any such~~ the trust agreement securing, ~~such~~ the bonds, notes, or other obligations, may, either at law or in equity, by suit, action, mandamus in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under ~~such~~ the resolution or trust agreement, and may enforce and compel the performance of all duties required by this division or by ~~such~~ the resolution or trust agreement to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges herein authorized and required by the provisions of ~~such~~ the resolution or trust agreement to be fixed, established, and collected.

**Comment.** Section 44554 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

## Cities and Counties (part 4)

### **Health & Safety Code § 52033 (amended). Resolution authorizing issuance of bonds; security; enforcement rights**

52033. Any resolution authorizing the issuance of the bonds may contain covenants as to (1) the use and disposition of the revenues and receipts from or with respect to any home mortgages or loans to lending institutions for which the bonds are to be issued, including the creation and maintenance of reserves, (2) any insurance to be carried on any home, home mortgage or bonds and the use and disposition of insurance moneys, (3) the appointment of one or more banks or trust companies within or outside the state having the necessary trust powers as trustee, custodian, or trustee and custodian for the benefit of the bondholders, paying agent, or bond registrar, (4) the investment of any funds held by ~~such~~ the trustee or custodian, (5) the maximum interest rate payable on any home mortgage, and (6) the terms and conditions upon which the holders of the bonds or any portion thereof, or any trustees therefor, are entitled to the appointment of a receiver by a court of competent jurisdiction, and which may provide that the receiver may take possession of the home mortgages, or any part thereto, and maintain, sell or otherwise dispose of ~~such~~ the mortgages, prescribe other payments and collect, receive and apply all income and revenues thereafter arising therefrom.

Any resolution authorizing the issuance of bonds may provide that the principal or redemption price of, and interest on, the bonds shall be secured by a mortgage, pledge, assignment, security interest, insurance agreement or indenture of trust covering ~~such the~~ home mortgages or loans to lending institutions for which the bonds are issued and may include any improvements or extensions thereafter made. ~~Such~~ The mortgage, pledge, assignment, security interest, insurance agreement or indenture of trust may contain ~~such~~ covenants and agreements to properly safeguard the bonds as may be provided for in the resolution authorizing ~~such the~~ bonds and shall be executed in the manner as may be provided for in the resolution. The provisions of this part and ~~any such the~~ the resolution and ~~any such~~ mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust shall constitute a contract with the holder or holders of the bonds and continue in effect until the principal of, the interest on, and the redemption premiums, if any, on the bonds so issued have been fully paid or provision made therefor, and the duties of the issuing city or county and its agencies and officers under this part and ~~any such the~~ resolution and ~~any such~~ mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust shall be enforceable as provided therein by any bondholder by mandamus judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, foreclosure of ~~any such the~~ mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust or other appropriate suit, action or proceeding in any court of competent jurisdiction; provided, the resolution or any mortgage, pledge, assignment, security interest, insurance agreement, or indenture of trust under which the bonds are issued may provide that all ~~such~~ remedies and rights to enforcement may be vested in a trustee (with full power of appointment) for the benefit of all the bondholders, and that the trustee shall be subject to the control of ~~such the~~ number of holders or owners of any outstanding bonds as specified in the resolution.

**Comment.** Section 52033 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### State Department of Health Services (part 3)

#### **Health & Safety Code § 108900 (amended). Civil and criminal penalties**

108900. (a) The department may impose a civil penalty payable to the department upon any person who violates any provision of this chapter or any regulation adopted pursuant to this chapter in the amount of not more than five thousand dollars (\$5,000) per day. Each day a violation continues shall be considered a separate violation.

(b) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the

department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(c) Any person served with a complaint pursuant to subdivision (e) (b) may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in that case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(d) Any hearing required under this section shall be conducted by a departmental hearing officer appointed by the director. The department shall adopt regulations establishing a hearing process to review complaints. Until the department adopts these regulations, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that hearings shall be conducted by a departmental hearing officer appointed by the director. The department shall have all the powers granted in that chapter.

(e) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(f) ~~Within 30 days after service of a copy of a decision issued by the director, any A person so served may file with the superior court a petition for writ of mandate for judicial review of the decision. Any person who fails to file the petition within this 30-day period the time prescribed by Section 1123.640 of the Code of Civil Procedure may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this section.~~

~~This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

(g) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

(h) If the violation is committed after a previous imposition of a penalty under this section that has become final, or if the violation is committed with intent to mislead or defraud, or if the violation concerns tableware primarily used by children or marketed for children, the person shall be subject to imprisonment for not more than one year in the county jail or imprisonment in state prison, or a fine of not more than ten thousand dollars (\$10,000), or both the imprisonment and fine.

**Comment.** Section 108900 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (f) requiring the petition to be filed in superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (f) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (f) that the filing of a petition for a writ of mandate does not stay corrective action or penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

**Health & Safety Code § 110915 (amended). Civil penalties; hearing; review; civil action**

110915. (a) In lieu of prosecution, the director may levy a civil penalty against any person who violates this article or any regulation adopted pursuant to this article in an amount not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this article, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the director finds that a violation was not intentional, the director may levy a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivisions (a) and (b), the director may issue a notice of violation, if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director, upon request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, judicial review of the decision of the director may be sought by any person within 30 days of the date of the final order of the director pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state.

**Comment.** Subdivision (e) of Section 110915 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (e) permitting judicial review to be sought by “any person” is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). This may not be a significant substantive change, because the former reference to “any person” may have been qualified by the provision in Code of Civil Procedure Section 1086 permitting mandamus to be sought by a party “beneficially interested.” The former provision in subdivision (e) on the time limit to seek judicial review is superseded by Code of Civil Procedure Section 1123.640.

**Health & Safety Code § 111855 (amended). Civil penalties**

111855. (a) If any person violates any provision of this part, or any regulation adopted pursuant to this part, the department may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed one thousand dollars (\$1,000) per day. Each day a violation continues shall be considered a separate violation.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with a complaint pursuant to subdivision (c) of this section may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in which case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(e) Any hearing required under this section shall be conducted by a departmental hearing officer appointed by the director. The department shall adopt regulations establishing a hearing process to review complaints. Until the department adopts these regulations, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that hearings shall be

conducted by a departmental hearing officer appointed by the director. The department shall have all the powers granted in that chapter.

(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

~~(g) Within 30 days after service of a copy of a decision issued by the director, any A person so served may file with the superior court a petition for writ of mandate for judicial review of the decision. Any person who fails to file the petition within this 30-day period the time prescribed by Section 1123.640 of the Code of Civil Procedure may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this part or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

(h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

**Comment.** Section 111855 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (g) requiring the petition to be filed in superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (g) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.640. The former language in subdivision (g) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (g) that the filing of a petition for a writ of mandate does not stay corrective action or penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

#### **Health & Safety Code § 111940 (amended). Civil penalties**

111940. (a) If any person violates any provision of Chapter 4 (commencing with Section 111950), Chapter 5 (commencing with Section 112150), Chapter 6 (commencing with Section 112350), Chapter 7 (commencing with Section 112500), Chapter 8 (commencing with Section 112650), Chapter 10 (commencing with Section 113025), or Article 3 (commencing with Section 113250) of Chapter 11, or Chapter 4 (commencing with Section 108100) of Part 3, or any regulation adopted pursuant to these provisions, the department may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed one thousand dollars (\$1,000) per day. Each day a violation continues shall be considered a separate violation.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with a complaint pursuant to subdivision (c) of this section may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in which case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(e) Any hearing required under this section shall be conducted by a departmental hearing officer appointed by the director. The department shall adopt regulations establishing a hearing process to review complaints. Until the department adopts these regulations, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that hearings shall be conducted by a departmental hearing officer appointed by the director. The department shall have all the powers granted in that chapter.

(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(g) ~~Within 30 days after service of a copy of a decision issued by the director, any A person so served may file with the superior court a petition for writ of mandate for judicial review of the decision. Any person who fails to file the petition within this 30-day period the time prescribed by Section 1123.640 of the Code of Civil Procedure may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern any~~

~~proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to the Miscellaneous Food, Food Facility, and Hazardous Substances Act (Section 27) or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

(h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

**Comment.** Section 111940 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (g) prescribing the time for review is superseded by Code of Civil Procedure Section 1123.640. The former reference in subdivision (g) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (g) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (g) that the filing of a petition for a writ of mandate does not stay required corrective action is continued in substance in Code of Civil Procedure Section 1123.720(a).

#### **Health & Safety Code § 112615 (amended). Judicial review**

~~112615. In the event the director suspends or revokes any license, the licensee may obtain judicial review of the order by filing a petition for a writ of mandate in accordance with under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure in the superior court of the county in which the licensed premises are located within thirty (30) days from the date notice in writing of the director's order revoking or suspending the license has been served upon said licensee.~~

**Comment.** Section 112615 is amended to insert a reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the time limit for filing a petition for review. The time to file a petition for review is provided in Code of Civil Procedure Section 1123.640.

### Resources Agency

#### **Health & Safety Code § 113220 (amended). Extension of time; administrative appeal**

113220. There shall be no administrative appeal of the secretary's decision regarding a request for an extension. Judicial review of the decision of the Secretary of the Resources Agency on any request for an extension may be made by the manufacturer under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. In addition, any member of the public, without damages, at ~~his~~ the person's own expense, has standing to bring an action for the purpose of inquiring into the validity of a decision of the secretary on the grounds of the abuse of discretion where the findings are unsupported by the

evidence. This section shall not be construed to prohibit the use of any other remedy available under any other provision of law.

**Comment.** Section 113220 is amended to make clear judicial review is under the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950.

#### State Department of Health Services (part 4)

##### **Health & Safety Code § 115155 (amended). Judicial review**

115155. Any final order entered in any proceeding under Sections 115145 and 115150 shall be subject to judicial review ~~in the manner prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 115155 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

##### **Health & Safety Code § 116625 (amended). Revocation or suspension of permit; judicial review**

116625. (a) The department, after a hearing noticed and conducted as provided in Section 11500 of the Government Code, may suspend or revoke any permit issued pursuant to this chapter if the department determines pursuant to the hearing that the permittee is not complying with the permit, this chapter, or any regulation, standard, or order issued or adopted thereunder, or that the permittee has made a false statement or representation on any application, record, or report maintained or submitted for purposes of compliance with this chapter.

(b) The permittee may file ~~with the superior court~~ a petition for a writ of mandate for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure of any decision of the department made pursuant to subdivision (a).

Failure to file a petition shall not preclude a party from challenging the reasonableness or validity of a decision of the department in any judicial proceeding to enforce the decision or from pursuing any remedy authorized by this chapter.

(c) The department may temporarily suspend any permit issued pursuant to this chapter prior to any hearing when the action is necessary to prevent an imminent or substantial danger to health. The director shall notify the permittee of the temporary suspension and the effective date thereof and, at the same time, notify the permittee that a hearing has been scheduled. The hearing shall be held as soon as possible, but not later than 15 days after the effective date of the temporary suspension. The temporary suspension shall remain in effect until the hearing is completed and the director has made a final determination on the merits, that in any event shall be made within 15 days after the completion of the hearing. If the determination is not transmitted within 15 days after the hearing is completed, the temporary suspension shall be of no further effect.

**Comment.** Subdivision (b) of Section 116625 is amended to replace the former reference to a writ of mandate with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to the superior court is also deleted. This is nonsubstantive, since judicial review under the Code of Civil Procedure is in the superior court. Code Civ. Proc. § 1123.510.

**Health & Safety Code § 116700 (amended). Judicial review**

116700. (a) ~~Within 30 days after service of a copy of an order issued by the department, any~~ An aggrieved party may file with the superior court a petition for a writ of mandate for judicial review thereof. Failure to file ~~an action~~ a petition shall not preclude a party from challenging the reasonableness and validity of a decision or order of the department in any judicial proceedings brought to enforce the decision or order or for any civil or criminal remedy authorized by this chapter.

(b) ~~The evidence before the court shall consist of all relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the provisions of this chapter. In every case, the court shall exercise its independent judgment on the evidence.~~

(e) Except as otherwise provided in this section, ~~subdivisions (e) and (f) of Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

**Comment.** Section 116700 is amended to revise the reference to the provisions for judicial review, and to apply all of the judicial review provisions of the Code of Civil Procedure, and not merely the two subdivisions formerly mentioned. See Code Civ. Proc. §§ 1120-1123.950. Section 116700 is also amended to delete provisions formerly in subdivision (b), which are superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standard of review) and 1123.850 (new evidence on judicial review). The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

**Health & Safety Code § 121270 (amended). AIDS Vaccine Victims Compensation Fund**

121270. (a) There is hereby created the AIDS Vaccine Victims Compensation Fund.

(b) For the purposes of this section:

(1) “AIDS vaccine” means a vaccine that (A) has been developed by any manufacturer and (B) is approved by the FDA or the department pursuant to Part 5 (commencing with Section 109875) of Division 104 as a safe and efficacious vaccine for the purpose of immunizing against AIDS.

(2) “Board” means the State Board of Control.

(3) “Damages for personal injuries,” means the direct medical costs for the care and treatment of injuries to any person, including a person entitled to recover damages under Section 377 of the Code of Civil Procedure, proximately caused by an AIDS vaccine, the loss of earnings caused by the injuries, and the amount necessary, but not to exceed five hundred fifty thousand dollars (\$550,000), to compensate for noneconomic losses, including pain and suffering caused by the injuries.

(4) “Fund” means the AIDS Vaccine Victims Compensation Fund.

(c) The board shall pay from the fund, contingent entirely upon the availability of moneys as provided in subdivision (o), damages for personal injuries caused by an AIDS vaccine that is sold in or delivered in California, and administered or dispersed in California to the injured person except that no payment shall be made for any of the following:

(1) Damages for personal injuries caused by the vaccine to the extent that they are attributable to the comparative negligence of the person making the claim.

(2) Damages for personal injuries in any instance when the manufacturer has been found to be liable for the injuries in a court of law.

(3) Damages for personal injuries due to a vaccination administered during a clinical trial.

(d) An application for payment of damages for personal injuries shall be made on a form prescribed by the board, that application may be required to be verified, within one year of the date that the injury and its cause are discovered. Upon receipt, the board may require the submission of additional information necessary to evaluate the claim.

(e)(1) Within 45 days of the receipt of the application and the submission of any additional information, the board shall do either of the following:

(A) Allow the claim in whole or part.

(B) Disallow the claim.

(2) In those instances of unusual hardship to the victim, the board may grant an emergency award to the injured person to cover immediate needs upon agreement by the injured person to repay in the event of a final determination denying the claim.

(3) If the claim is denied in whole or part, the victim may apply within 60 days of denial for a hearing. The hearing shall be held within 60 days of the request for a hearing unless the injured person requests a later hearing.

(f) At the hearing the injured person may be represented by counsel and may present relevant evidence as defined in subdivision (c) of Section 11513 of the Government Code. The board may consider additional evidence presented by its staff. If the injured person declines to appear at the hearing, the board may act solely upon the application, the staff report, and other evidence that appears on the record.

(g) The board may delegate the hearing of applications to hearing examiners.

(h) The decision of the board shall be in writing and shall be delivered or mailed to the injured person within 30 days of the hearing. Upon the request by the applicant within 30 days of delivery or mailing, the board may reconsider its decision.

(i) ~~Judicial review of a decision shall be under Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, and the court shall exercise its independent judgment. A petition for review shall be filed as follows:~~

~~(1) If no request for reconsideration is made, within 30 days of personal delivery or mailing of the board's decision on the application.~~

~~(2) If a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or mailing of the notice of rejection.~~

~~(3) If a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or mailing of the final decision on the reconsidered application.~~

(j) The board shall adopt regulations to implement this section, including those governing discovery.

(k) The fund is subrogated to any right or claim that any injured person may have who receives compensation pursuant to this section, or any right or claim that the person's personal representative, legal guardian, estate, or survivor may have, against any third party who is liable for the personal injuries caused by the AIDS vaccine, and the fund shall be entitled to indemnity from that third party. The fund shall also be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured person.

(l) In the event that the injured person, or his or her guardian, personal representative, estate, or survivors, or any of them, bring an action for damages against the person or persons liable for the injury or death giving rise to an award by the board under this section, notice of institution of legal proceedings and notice of any settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. All notices shall be given by the attorney employed to bring the action for damages or by the injured person, or his or her guardian, personal representative, estate, or survivors, if no attorney is employed.

(m) This section is not intended to affect the right of any individual to pursue claims against the fund and lawsuits against manufacturers concurrently, except that the fund shall be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured party by the fund.

(n) There is hereby created the AIDS Vaccine Injury Compensation Policy Review Task Force consisting of 14 members. The task force shall be composed of 10 members appointed by the Governor, of which two shall be from a list provided by the ~~California Trial Lawyers Association~~ Consumer Attorneys of California, one from the department, the Director of Finance, one unspecified member, and one attorney with experience and expertise in products liability and negligence defense work, two representing recognized groups which represent victims of vaccine induced injuries or AIDS victims, or both, and two representing manufacturers actively engaged in developing an AIDS vaccine. In addition four Members of the Legislature or their designees shall be appointed to the task force, two of which shall be appointed by the Speaker of the Assembly and two of which shall be appointed by the Senate Rules Committee. The chairperson of the task force shall be appointed by the Governor from the membership of the task force. The task force shall study and make recommendations on the legislative

implementation of the fund created by subdivision (a). These recommendations shall at least address the following issues:

- (1) The process by which victims are to be compensated through the fund.
- (2) The procedures by which the fund will operate and the governance of the fund.
- (3) The method by which manufacturers are to pay into the fund and the amount of that payment.
- (4) The procedural relationship between a potential victim's claim through the fund and a court claim made against the manufacturer.
- (5) Other issues deemed appropriate by the task force.

The task force shall make its recommendations to the Legislature on or before June 30, 1987.

(o) The fund shall be funded wholly by a surcharge on the sale of an AIDS vaccine, that has been approved by the FDA, or by the department pursuant to Part 5 (commencing with Section 109875) of Division 104, in California in an amount to be determined by the department. The surcharge shall be levied on the sale of each unit of the vaccine sold or delivered, administered, or dispensed in California. The appropriate amount of the surcharge shall be studied by the AIDS Vaccine Injury Compensation Policy Review Task Force which shall recommend the appropriate amount as part of its report, with the amount of the surcharge not to exceed ten dollars (\$10) per unit of vaccine. Expenditures of the task force shall be made at the discretion of the Director of Finance or the director's designee.

(p) For purposes of this section, claims against the fund are contingent upon the existing resources of the fund as provided in subdivision (o), and in no case shall the state be liable for any claims in excess of the resources in the fund.

**Comment.** Section 121270 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former time limits provided in subdivision (i) are superseded by Code of Civil Procedure Section 1123.640.

<p>☞ <b>Note.</b> Subdivision (n) appears obsolete. The staff asked the Department of Health Services (Catherine Lopez, 916-323-4318) to comment on whether it might be deleted.</p>
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**Health & Safety Code § 123340 (amended). Certificate of amounts unpaid; judicial review**

123340. (a) Except as provided in subdivision (c), if any amount is due and payable and unpaid as a result of an overpayment to a vendor or local agency established under this article that is identified through an audit or examination conducted by or on behalf of the director and the department has issued an audit or examination finding, or an administrative decision resulting from an administrative appeal of the audit or examination finding that has become final, the director may file in the office of the County Clerk of Sacramento County and with the county clerk of the county in which the vendor has his or her principal place of business, a certificate containing the following:

(1) The amount due and owing and unpaid plus the applicable interest at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding, made pursuant to Section 316.5 is mailed to the vendor or local agency.

(2) A statement that the director has complied with this article prior to the filing of the certificate.

(3) A request that judgment be entered against the vendor or local agency in the amount set forth in the certificate.

The county clerk immediately upon the filing of the certificate, shall enter a judgment for the State of California against the vendor or local agency in the amount set forth in the certificate.

Notwithstanding any provision of law to the contrary, the Special Supplemental Food Program for Women, Infants, and Children shall pay the normal fee charged by the county for the certificate of judgment.

Nothing in this subdivision shall prevent the director from using any other means available in law to recover amounts due and owing and unpaid from the vendor or local agency.

(b) The dates when the department may file the certificate and seek judgment from the county clerk, as provided in subdivision (a), depends on whether the audit finding is appealed by the vendor or local agency.

(1) If the audit finding or lower level administrative decision is not appealed, the department may file the certificate the day after the end of the appeal period or anytime thereafter, but not later than three years after the payment became due and owing.

(2) If the audit finding or lower level administrative decision is appealed to the director, the department may file the certificate no earlier than 90 days after the issuance of the final decision by the director, but no later than three years after the issuance of the final decision.

(c) If the vendor seeks judicial review of the final decision of the director pursuant to ~~Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, and notice of the action is properly served on the director within 90 days of the issuance of the final decision, the department shall not file any certificate as provided in subdivision (a).

(d) If the vendor does not seek judicial review of the final decision of the director or does not properly serve notice within 90 days from the date of the final decision of the director, the department may file the certificate and obtain judgment pursuant to subdivision (a).

**Comment.** Section 123340 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

<p>☞ <b>Note.</b> The Department of Health Services determines the amount due after audit. No “evidentiary hearing for determination of facts” is required, so this is not an adjudicative proceeding under the draft statute. Section 1121.220. The 90-day provision of subdivision</p>
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(d) should be retained, because without it the general three or four year limitations period for civil actions would apply.

### Advisory Health Council

#### **Health & Safety Code § 127275 (amended). Judicial review**

127275. Judicial review of a decision of the Advisory Health Council affirming the decision of the department pursuant to subdivision (a) of Section 127260 may be had by any party to the proceedings, other than the department, as provided in ~~Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~ An appellant desiring to contest an adverse decision of the department need not pursue the appeal procedures prescribed by this chapter, but may elect to pursue direct judicial remedy pursuant to ~~Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~ ~~The decision of the council or department shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.~~

**Comment.** Section 127275 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former last sentence of Section 127275 (substantial evidence review) is superseded by Code of Civil Procedure Section 1123.430. The provision for judicial review by any party “other than the department” is a special exception to the standing rules of Sections 1123.220-1123.240.

### Office of Statewide Health Planning and Development

#### **Health & Safety Code § 128775 (amended). (Operative on July 1, 1997) Administrative and judicial review**

128775. (a) Any health facility affected by any determination made under this part by the office may petition the office for review of the decision. This petition shall be filed with the office within 15 business days, or within a greater time as the office, with the advice of the commission, may allow, and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing shall be commenced within 60 calendar days of the date on which the petition was filed. The hearing shall be held before an employee of the office, an administrative law judge employed by the Office of Administrative Hearings, or a committee of the commission chosen by the chairperson for this purpose. If held before an employee of the office or a committee of the commission, the hearing shall be held in accordance with any procedures as the office, with the advice of the commission, shall prescribe. If held before an administrative law judge employed by the Office of Administrative Hearings, the hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The employee, administrative law judge, or committee shall prepare a recommended decision including findings of fact and conclusions of law and present it to the office for its adoption. The

decision of the office shall be in writing and shall be final. The decision of the office shall be made within 60 calendar days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(c) Judicial review of any final action, determination, or decision may be had by any party to the proceedings as ~~provided in Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The decision of the office shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.~~

(d) The employee of the office, the administrative law judge employed by the Office of Administrative Hearings, the Office of Administrative Hearings, or the committee of the commission, may issue subpoenas and subpoenas duces tecum in a manner and subject to the conditions established by Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

~~(e) This section shall become operative on July 1, 1997.~~

**Comment.** Section 128775, as amended and renumbered by Section 141.4 of Chapter 1023 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former penultimate sentence of Section 128775 (substantial evidence review) is superseded by Code of Civil Procedure Section 1123.430. Former subdivision (e) (delayed operative date) is deleted as no longer necessary.

<p>☞ <b>Note.</b> The sunset provision is in Health and Safety Code Section 128815. This chapter requires reports and data collection, the need for which may be temporary.</p>
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## Insurance Commissioner

### **Ins. Code § 728 (amended). Removal or suspension of officer or employee of insurer**

728. (a) For the purposes of this section, the following definitions are applicable:

(1) “Subject person” means any director, officer, or employee or other natural person who participates in the management, direction, or control of an insurer.

(2) “Insurer” means any domestic insurer, and any insurer which is admitted to transact insurance in this state, provided that if a subject person of an insurer is not a resident of California, or operating out of a place of business within California, then the subject person shall be engaged in the direct management, direction, or control of the insurer in California in order to come within the provisions of this section.

(b) If, after notice and a hearing, the commissioner finds all of the following, the commissioner may issue an order removing a subject person from his or her office or employment with the insurer and prohibiting the subject person from further participating in any manner in the conduct of the business of the insurer, except with the prior consent of the commissioner:

(1) The subject person has engaged in repeated acts of misconduct with respect to the operations of an insurer which have resulted in substantial financial loss to an insurer.

(2) The misconduct which forms the pattern is fraudulent, or consists of willful acts or omissions involving personal dishonesty in the acceptance, custody, or payment of money or property on the part of the subject person which has endangered or is likely to endanger the solvency of the insurer.

(3) The pattern of misconduct is relevant in that it demonstrates unfitness to continue as a subject person.

(c)(1) If the commissioner gives written notice pursuant to subdivision (b) to a subject person, the commissioner may immediately issue an order suspending the subject person from his or her office or employment with the insurer and prohibiting the subject person from further participating in any manner in the conduct of the business of an insurer, except with the prior consent of the commissioner if the commissioner: (A) finds that failure to immediately issue such the order threatens the financial solvency of the insurer or may otherwise cause immediate and irreparable financial injury to the insurer (B) serves that subject person and the insurer with written notice of the suspension order; and (C) finds that all of the necessary factors are present which would permit the commissioner, after notice and a hearing, to issue an order pursuant to subdivision (b) removing a subject person from his or her office or employment with the insurer and prohibiting the subject person from further participating in any manner in the conduct of the business of an insurer.

(2) Any suspension order issued pursuant to paragraph (1) of this subdivision shall be effective until the date the commissioner dismisses the charges contained in the notice served under subdivision (b) or paragraph (1) of this subdivision, the effective date of an order issued by the commissioner pursuant to subdivision (b), or a court issues a stay of the order pursuant to subdivision (d).

(d) Within 10 days after a subject person has been served with an order of suspension pursuant to subdivision (c), the person may apply to the superior court of the county in which the principal office of the insurer is located for a stay of the order pending completion of the proceedings pursuant to subdivision (b), and the court shall have jurisdiction to issue an order staying the suspension. Nothing in this subdivision shall be deemed to authorize the court to issue a stay order on an ex parte basis.

(e)(1) If the commissioner finds both of the following, he or she may immediately issue an order suspending a subject person from his or her office or employment with an insurer and prohibiting the subject person from further participating in any manner in the conduct of the business of an insurer, except with the prior consent of the commissioner: (A) the subject person has been charged in an indictment issued by a grand jury, or in an information, complaint, or similar pleading issued by a United States Attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime

punishable by imprisonment for a term exceeding one year and which involves as one of its necessary elements a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of the insurer, or may otherwise cause immediate and irreparable financial injury to the insurer.

In the event the criminal proceedings are terminated other than by judgment of conviction, an order issued pursuant to paragraph (1) of this subdivision shall be deemed rescinded as if it had not been issued.

(2) If the commissioner finds both of the following, he or she may immediately issue an order removing a subject person from his or her office or employment with an insurer and prohibiting the subject person from further participating in any manner in the conduct of the business of the insurer, except with the prior consent of the commissioner: (A) the person has been convicted during the preceding five years of a crime that is punishable by imprisonment for a term exceeding one year and that has as one of its necessary elements a fraudulent act or an act of dishonesty in the accepting, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of the insurer, or may otherwise cause immediate and irreparable financial injury to the insurer.

(3) The fact that any subject person charged with a crime involving as one of its necessary elements a fraudulent act or any act of dishonesty in the acceptance, custody, or payment of money or property is not convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this code.

(f)(1) Within 30 days after an order is issued pursuant to subdivision (c) or (e), the person to whom the order is issued may choose to do either of the following: (A) file with the commissioner an application for a hearing on the order. The commissioner shall, upon written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period of time to which the person consents, the order shall be deemed rescinded as if it had not been issued. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded as if it had not been issued, or (B) petition for judicial review of the order pursuant to Section 1085 under Title 2 (commencing with Section 1120) of the Code of Civil Procedure, ~~where the court shall exercise its independent judgment on the evidence.~~

(2) The right of any person to whom an order is issued pursuant to subdivision (c) or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner for a hearing on the order as provided by this subdivision.

(g)(1) Any person to whom an order is issued pursuant to subdivision (b), (c), or (e) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless he or she finds that it is reasonable to believe that the person will, if and when he or she becomes a subject person, comply with all of the applicable provisions of this code and of any regulation or order issued thereunder.

(2) The right of any person to whom an order is issued pursuant to subdivision (b), (c), or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner pursuant to paragraph (1).

(h)(1) It is unlawful for any subject person or former subject person to whom an order is issued pursuant to subdivision (b), (c) or (e) to do any of the following as long as the order is effective, except with the prior consent of the commissioner: (A) to serve or act as a subject person for or in any insurer; or (B) to directly or indirectly solicit, procure, or transfer or attempt to transfer or vote any proxy, consent or authorization with respect to any shares or other securities of any insurer having voting rights.

(2) If, after notice and a hearing, the commissioner finds that any person has violated paragraph (1) of this subdivision, the commissioner may order that person to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues, which may be recovered in a civil action.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the commissioner may be relevant.

(3) If, after notice and a hearing, the commissioner finds that any insurer has knowingly aided and abetted a subject person in a violation of paragraph (1) of this subdivision, the commissioner may order that insurer to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation, or in the case of a continuing violation, ten thousand dollars (\$10,000) for each day for which the violation continues up to a maximum of one hundred thousand dollars (\$100,000), which may be recovered in a civil action. Continuation of the subject person's salary or other employee benefits pending final disposition shall not be considered aiding and abetting a subject person.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous

violations by the person, and such other factors as in the opinion of the commissioner may be relevant.

(i) Except as otherwise provided by this section any hearing required by this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, subject to the following:

(1) At the option of the subject person, all such hearings shall be a closed session and private, and the records of the hearings shall not be made public unless the hearing results in a final order adverse to the subject person.

~~(2) Where judicial review is sought by the subject person pursuant to Section 11523 of the Government Code, the court shall exercise its independent judgment upon the evidence.~~

~~(3)~~ When a subject person to whom an order has been issued pursuant to subdivision (c) or (e) applies to the commissioner for a hearing pursuant to subparagraph (A) of paragraph (1) of subdivision (f), the Office of Administrative Hearings shall schedule the hearing on a priority basis at the earliest possible time and once the hearing is commenced, it shall not be continued for more than three business days without the consent of the subject person.

(4) (3) If the Office of Administrative Hearings cannot schedule the commencement of a hearing within 15 business days as provided by paragraph (1) of subdivision (f), and the subject person does not waive his or her right to a hearing commencing within 15 days, the hearings may be conducted by administrative law judges appointed by the commissioner. In the event the subject person chooses to accept a hearing before an administrative law judge appointed by the commissioner, the hearing shall be completed within 45 days of commencement unless additional time is requested by the subject person. If the hearing is not completed within 45 days, the order shall be deemed rescinded as if it had not been issued.

(j) Nothing in this section is intended to or shall be construed to create a private cause of action against an offending subject person or an insurer or production agency that aids and abets a subject person, based on the standards established by this section or the commissioner's findings or orders pursuant to this section.

**Comment.** Section 728 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provisions in subdivisions (f) and (i) for independent judgment review. Standards of review are prescribed in Code of Civil Procedure Sections 1123.420-1123.460.

**Ins. Code § 791.18 (amended). Judicial review**

791.18. (a) Any person subject to an order of the commissioner under Section 779.17 or Section 791.20 or any person whose rights under this article were allegedly violated may obtain a judicial review of any order or report of the commissioner ~~by filing in a court of competent jurisdiction, within 30 days from the date of the service of such order or report, pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

~~The court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the commissioner, in whole or in part.~~

(b) An order or report issued by the commissioner under Section 791.17 shall become final:

(1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in subdivision (c) of Section 791.17; or

(2) Upon a final decision of the court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.

(c) No order or report of the commissioner under this article or order of a court to enforce the same shall in any way relieve or absolve any person affected by such the order or report from any liability under any law of this state.

**Comment.** Section 791.18 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) prescribing the time for review is superseded by Code of Civil Procedure Section 1123.640. The former last sentence of subdivision (a) is superseded by Code of Civil Procedure Section 1123.730 (type of relief).

**Ins. Code § 1065.4 (amended). Judicial review**

1065.4. Any person subject to an order or proceeding pursuant to this article shall be entitled to judicial review of the order or proceeding ~~by means of any remedy afforded by law. Proceedings for judicial review shall be commenced within 60 days from the making and service of any order issued pursuant to Sections 1065.1 or 1065.3 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 1065.4 is amended to make clear judicial review is under Code of Civil Procedure Sections 1120-1123.950. The former 60-day time limit is deleted from Section 1065.4 because it is superseded by Code of Civil Procedure Section 1123.640.

**Ins. Code § 1104.9 (amended). Maintenance of securities and money in other jurisdictions**

1104.9. (a)(1) As used in this section, “qualified custodian” means: (A) commercial banks (as defined in Section 105 of the Financial Code), savings and loan associations (as defined in Section 5102 of the Financial Code), and trust companies (other than trust departments of title insurance companies), or any entity approved by the commissioner as a qualified custodian; (B) that is domiciled and has a principal place of business in this state; and (C) that either has a net worth of at least one hundred million dollars (\$100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The commissioner may consider, among other factors, evidence of the following in order to determine whether a custodian is financially secure for the purpose of this subdivision: (i) its obligations under an agreement approved by the commissioner pursuant to subdivision (c) are guaranteed by its parent holding company, (ii) its parent holding company has a net worth of at least one hundred

million dollars (\$100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars (\$100,000,000).

(2) As used in this section, “qualified depository” means an entity that is located in this state or a reciprocal state and is (A) a depository that provides for the long-term immobilization of securities or a clearing corporation that is also a depository, and that in either case has been approved by or registered with the Securities and Exchange Commission, (B) a Federal Reserve bank, or (C) an entity approved by the commissioner as a qualified depository.

A “qualified depository” may also include an entity that is located outside the United States, if it is a securities depository and clearing agency, incorporated or organized under the laws of a country other than the United States, (i) that operates a transnational system for securities or equivalent book entries (specifically Euroclear and Cedel, or successors to all or substantially all of their operations), or (ii) that operates a central system for securities or equivalent book entries, but solely for securities issued by, or by entities within, the country in which the securities depository and clearing agency is incorporated or organized. The depository shall meet all qualifying requirements imposed by this section upon Euroclear or Cedel.

(3) As used in this section, “qualified subcustodian” means an entity located in this state or a reciprocal state (A) that holds securities of the domestic insurer, and maintains an account through which the securities are held, in this state or a reciprocal state and (B) that has shareholder equity of at least one hundred million dollars (\$100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The qualified subcustodian shall be: (A) a commercial bank, a savings and loan association, or a trust company (other than trust departments of title insurance companies); (B) a subsidiary of a qualified custodian; or (C) any entity approved by the commissioner as a qualified subcustodian. The commissioner may consider, among other factors, evidence of the following in order to determine whether a subcustodian is financially secure for the purpose of this subdivision: (i) its obligations are guaranteed by its parent company, (ii) its parent holding company has shareholder equity of at least one hundred million dollars (\$100,000,000), or (iii) it is a member of a holding company system with shareholder equity of at least one hundred million dollars (\$100,000,000). A “qualified subcustodian” may also include an entity that is located outside the United States, that is used by the domestic insurer for the purpose of obtaining access to a qualified depository located outside the United States. The qualified foreign subcustodian shall be a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country’s government or an agency thereof, and that has shareholders’ equity in excess of two hundred million dollars (\$200,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year; or a majority-owned direct or indirect subsidiary of a qualified United States bank or

bank holding company, if the subsidiary is incorporated or organized under the laws of a country other than the United States and has shareholders' equity in excess of one hundred million dollars (\$100,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year; or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The commissioner may consider, among other factors, evidence of the following in order to determine whether a qualified foreign subcustodian is financially secure for purposes of this subdivision: (i) its obligations are guaranteed by its parent company, (ii) its parent holding company has shareholder equity of at least two hundred million dollars (\$200,000,000), or (iii) it is a member of a holding company system with shareholder equity of at least two hundred million dollars (\$200,000,000).

(4) As used in this section, "subsidiary" means: (A) an entity all of whose voting securities (other than director qualifying shares, if any) are owned, directly or indirectly, by a qualified custodian; or (B) any affiliated entity approved by the commissioner as a subsidiary of a qualified custodian. For the purpose of this section, an affiliated entity means an entity that (A) controls or is controlled, either directly or indirectly or through one or more intermediaries by a qualified custodian or (B) is under the common control, directly or indirectly, as or with a qualified custodian.

(5) As used in this section, "entity approved by the commissioner as a qualified custodian," "entity approved by the commissioner as a qualified depository," "entity approved by the commissioner as a qualified subcustodian," and "entity approved by the commissioner as a subsidiary of a qualified custodian" mean those entities that meet the conditions or standards established by the commissioner. The commissioner shall charge and collect in advance a one-time fee of one thousand five hundred dollars (\$1,500) to review an application for approval of any entity pursuant to this section.

(6) As used in this section, "reciprocal state" has the same meaning as in subdivision (f) of Section 1064.1.

(7) As used in this section, "moneys" means cash held incidental to securities transactions occurring in the ordinary course of business with respect to securities held pursuant to the custodial agreements under this section.

(8)(A) Except as provided in subparagraph (B), as used in this section, "insurer," "domestic insurer," and "domestic admitted insurer" mean any insurer, other than a domestic life insurer that is incorporated or which has its principal place of business in this state. Except as provided in subparagraph (B), no portion of this section applies to domestic life insurers nor shall this section affect the interpretation of any other portion of this code with respect to domestic life insurers nor is it intended to create a precedent for the application of its provisions to those insurers. However, the exclusion of domestic life insurers from this section shall not be construed to diminish the commissioner's existing authority over those insurers under any other provision of this code.

(B) Domestic life insurers that are wholly owned by any insurer other than a domestic life insurer or are part of an insurance holding company system whose other insurer affiliates are not domestic life insurers may elect to be subject to this section by affirmatively stating that election in the statement otherwise required to be filed by that system pursuant to Section 1215.4.

(b) Notwithstanding Section 1104.1, a domestic admitted insurer may maintain its securities and moneys in a reciprocal state, subject to the requirements of this section, through a custodian account located in California in or with a qualified custodian, and that qualified custodian may maintain those securities or moneys in a qualified depository or qualified subcustodian, either or both of which may be located in a reciprocal state. In addition, a domestic insurer that has foreign investments or any other investments that require delivery outside of the United States upon sale or maturity that qualify under Section 1240, 1241, or 10506, or any other provision of this code may maintain those securities or moneys in or with a qualified depository located in a jurisdiction outside the United States. However, the aggregate amount of general account investments so deposited shall not exceed the lesser of 5 percent of the total admitted assets of the insurer or 25 percent of the excess of admitted assets over the sum of paid up capital, liabilities, and surplus required by Section 700.02. However, unless exempted by the commissioner, not more ~~that~~ than 50 percent of that amount of assets that an insurer is authorized to invest pursuant to Section 1241 or 1241.1 may be maintained in any single country in a qualified depository as defined in clause (ii) of paragraph (2) of subdivision (a) and as to life companies not more than 12.5 percent of that amount of assets that an insurer is authorized to invest pursuant to Section 1241 or 1241.1 may be maintained in any single country in a qualified depository as defined in clause (ii) of paragraph (2) of subdivision (a). The percentage or dollar value of admitted assets and paid up capital and liabilities shall be determined by the insurer's last preceding annual statement of conditions and affairs made as of the preceding December 31 that has been filed with the commissioner pursuant to law. No broker or agent, as defined in the Federal Securities Exchange Act of 1934 (15 U.S.C.A. Sec. 78c et seq.), may serve as a qualified custodian, qualified subcustodian, or qualified depository under this section. However, no otherwise qualified custodian or subcustodian shall be disqualified on account of its activities as a broker or dealer, as so defined, when the activities are incidental to its custodial or other business.

(c) No securities shall be deposited in or with a qualified custodian, qualified depository, or qualified subcustodian except as authorized by an agreement between the insurer and the qualified custodian, if the agreement is satisfactory to and has been approved by the commissioner. The agreement shall require that the securities be held by the qualified custodian for the benefit of the insurer and that the books and records of the qualified custodian shall so designate. The agreement shall further require that beneficial title to the securities remain in the insurer and shall require that the qualified subcustodian and qualified depository

be the agents of the qualified custodian. The agreement shall also specifically require that the qualified custodian shall exercise the standard of care of a professional custodian engaged in the banking or trust company industry and having professional expertise in financial and securities processing transactions and custody would observe in these affairs. This section does not affect the burden of proof under applicable law with respect to the assertion of liability in any claim, action, or dispute alleging any breach of, or failure to observe, that standard of care.

(d) No agreement between the qualified custodian and the insurer shall be approved by the commissioner unless the qualified custodian agrees therein to comply with this section. Except when the agreement is submitted in conjunction with an application for an original certificate of authority or variable contract qualification, a fee of five hundred dollars (\$500) shall be paid to the commissioner at the time of filing the agreement for approval. However, no fee shall be required if the form of the agreement has been previously submitted for approval and approved by the commissioner as certified by the insurer and qualified custodian submitting the agreement to the commissioner. The agreement shall be deemed approved unless, within 60 days after receipt by the commissioner of that agreement and any required filing fee, the commissioner has disapproved the agreement in writing citing specific reasons for disapproval.

(e) Notwithstanding the maintenance of securities with an out-of-state qualified depository or qualified subcustodian pursuant to agreement, if the commissioner has reasonable cause to believe that the domestic insurer (1) is conducting its business and affairs in such a manner as to threaten to render it insolvent, or (2) is in a hazardous condition or is conducting its business and affairs in a manner that is hazardous to its policyholders, creditors, or the public, or (3) has committed or is committing or has engaged or is engaging in any act that would constitute grounds for rendering it subject to conservation or liquidation proceedings, or if the commissioner determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately, then the commissioner may, without hearing, order the insurer and the qualified custodian promptly to effect the transfer of the securities back to a qualified custodian, qualified subcustodian, or qualified depository located in this state from any qualified depository or qualified subcustodian located outside of this state (the transfer order). Upon receipt of the transfer order, the qualified custodian shall promptly effect the return of the securities. Notwithstanding the pendency of any hearing or action provided for in subdivision (f), the transfer order shall be complied with by those persons subject to that order. Any challenge to the validity of the transfer order shall be made in accordance with subdivision (f). It is the responsibility of both the insurer and the qualified custodian to oversee that compliance with the transfer order is completed as expeditiously as possible. Upon receipt of a transfer order, there shall be no trading of the securities without specific instructions from the

commissioner until the securities are received in this state, except to the extent trading transactions are in process on the day the transfer order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of a transfer order does not affect the qualified custodian's liabilities with regard to the securities that are the subject of the order.

(f) At the same time the transfer order is served, the commissioner shall issue and also serve upon the insurer a notice of hearing to be held at a time and place fixed therein which shall not be less than 20 nor more than 45 days after the service thereof. Upon request of the insurer and agreement of the department, the hearing may be held within a shorter time but in no event less than 10 days after the service of the notice of hearing. The transfer order and notice of hearing may be served by certified mail, express mail, messenger, telegram, or any other means calculated to give prompt actual notice to (1) the California office of the insurer designated in the agreement, its home office as shown on its most recently filed annual or quarterly statement, or its California agent for service of process; and (2) the California office of the qualified custodian designated in the agreement. If, as a result of the hearing, any of the statements as to conduct, conditions, or grounds for the transfer order are found to be true, or if other conditions or grounds are discovered or become known at the hearing and are found to be true, the commissioner shall affirm the transfer order and may make additional order or orders, pertaining to the transfer order, as may be reasonably necessary.

(g) The insurer subject to the transfer order is be entitled to judicial review in the state of the commissioner's order issued as a result of the hearing.

(h) Alternatively, at any time prior to the commencement of the hearing on the transfer order, the insurer may waive the hearing and have judicial review in this state of the transfer order ~~by petition for writ of mandate and declaratory relief under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~ without first exhausting administrative remedies or procedures. In that event the insurer is not entitled to any extraordinary remedies prior to trial.

(i) No person other than the insurer shall have standing at the hearing by the commissioner or for any judicial review of the transfer order.

**Comment.** Section 1104.9, *as amended by* Chapter 179 of the Statutes of 1996, is amended to replace the former reference to a writ of mandate and declaratory relief with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Ins. Code § 1748.5 (amended). Suspension or removal from office or employment**

1748.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Production agency" means any person or organization licensed under Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(2) “Subject person” means any director, officer or employee of a production agency, any natural person who participates in the management or control of the business of a production agency, or any person licensed as a producer. A subject person of a production agency participates in the control of a production agency if he or she comes within the definition of “controlling person” as specified in subdivision (b) of Section 1668.5.

(3) “Insurer” means any domestic insurer, and any insurer which is admitted to transact insurance in this state, provided that if a subject person of an insurer is not a resident of California, or operating out of a place of business within California, then the subject person shall be engaged in direct management, direction, or conduct of the business of insurance in California in order to come within the provisions of this section.

(b) If, after notice and a hearing, the commissioner finds all of the following, the commissioner may issue an order removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from further participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner:

(1) The subject person has engaged in repeated acts of misconduct with respect to an insurer or production agency which is a direct cause of substantial financial loss to an insurer or the production agency or which has resulted in direct financial injury to insurance policyholders or applicants.

(2) The misconduct is fraudulent, or consists of willful acts or omissions involving personal dishonesty that demonstrates a continuing disregard for the safety and soundness of an insurer or production agency, or presents a direct financial injury to insurance policyholders or applicants.

(3) The conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person.

(c)(1) If the commissioner gives written notice pursuant to subdivision (b) to a subject person, the commissioner may immediately issue an order suspending the subject person from his or her office with the production agency and prohibiting the subject person from further participating in any manner in the business of an insurer or production agency, except with the prior consent of the commissioner, if the commissioner: (A) finds that failure to immediately issue the order threatens the financial solvency of an insurer or may otherwise cause direct financial injury to insurance policyholders or applicants; (B) serves that subject person and the production agency with written notice of the suspension order; and (C) finds that all of the necessary factors are present which would permit the commissioner, after notice and a hearing, to issue an order pursuant to subdivision (b) removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from further participating in any manner in the business of an insurer or production agency.

(2) Any suspension order issued pursuant to paragraph (1) of this subdivision shall be effective until the date the commissioner dismisses the charges contained

in the notice served under subdivision (b) or paragraph (1) of this subdivision, the effective date of an order issued by the commissioner pursuant to subdivision (b), or a court issues a stay of the order pursuant to subdivision (d).

(d) Within 10 days after a subject person has been served with an order of suspension pursuant to subdivision (c), the person may apply to the superior court of the county in which the principal office of the production agency is located for a stay of the order pending completion of the proceedings pursuant to subdivision (b), and the court shall have jurisdiction to issue an order staying the suspension. Nothing in this subdivision shall be deemed to authorized the court to issue a stay order on a ex parte basis.

(e)(1) If the commissioner finds both of the following, he or she may immediately issue an order suspending a subject person from his or her office or employment with a production agency and prohibiting the subject person from further participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the subject person has been charged in an indictment issued by a grand jury, or in an information, complaint, or similar pleading issued by a United States Attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime punishable by imprisonment for a term exceeding one year and which involves as one of its necessary elements a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may otherwise cause direct financial injury to insurance policyholders or applicants.

In the event the criminal proceedings are terminated other than by judgment of conviction, an order issued pursuant to paragraph (1) of this subdivision shall be deemed rescinded as if it had not been issued.

(2) If the commissioner finds both of the following, he or she may immediately issue an order removing a subject person from his or her office or employment with a production agency and prohibiting the subject person from further participating in any manner in the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the person has during the preceding five years been convicted of a crime that is punishable by imprisonment for a term exceeding one year and has as one of its necessary elements a fraudulent act or an act of dishonesty in the accepting, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may otherwise cause direct financial injury to insurance policyholders or applicants.

(3) The fact that any subject person charged with a crime involving as one of its necessary elements a fraudulent act or any act of dishonesty in the acceptance, custody, or payment of money or property is not convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this code.

(f)(1) Within 30 days after an order is issued pursuant to subdivision (c) or (e), the subject person to whom the order is issued may choose to do either of the following: (A) file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the subject person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period of time to which the subject person consents, the order shall be deemed rescinded as if it had not been issued. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded as if it had not been issued, or (B) petition for judicial review of the order pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, ~~where the court shall exercise its independent judgment on the evidence.~~

(2) The right of any subject person to whom an order is issued pursuant to subdivision (c) or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner for a hearing on the order as provided by this subdivision.

(g)(1) Any person to whom an order is issued pursuant to subdivision (b), (c), or (e) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless he or she finds that it is reasonable to believe that the person will, if and when he or she becomes a subject person, comply with all of the applicable provisions of this code and of any regulation or order issued thereunder.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner pursuant to paragraph (1).

(h)(1) It is unlawful for any subject person or former subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to do any of the following as long as the order is in effect, except with the prior consent of the commissioner: (A) to serve or act as a subject person for any insurer or production agency; or (B) to directly or indirectly vote any shares or other securities of an insurer or production agency.

(2) If, after notice and a hearing, the commissioner finds that any subject person has violated paragraph (1) of this subdivision, the commissioner may order that subject person to pay to the commissioner a civil penalty, which may be recovered in a civil action, in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each day for which the violation continues.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of

previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(3) If, after notice and a hearing, the commissioner finds that any production agency has knowingly aided and abetted a subject person in a violation of paragraph (1) of this subdivision, or subdivision (h) of Section 728, the commissioner may order that production agency to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues, up to a maximum of fifty thousand dollars (\$50,000). Continuation of the subject person's salary or other employee benefits pending final disposition shall not be considered aiding and abetting a subject person.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(i) Except as otherwise provided by this section, any hearing required by this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, subject to the following:

(1) At the option of the subject person, all hearings shall be a closed session and private, and the records of the hearings shall not be made public unless the hearing results in a final order adverse to the subject person.

~~(2) Where judicial review is sought by the subject person pursuant to Section 1085 of the Code of Civil Procedure, the court shall exercise its independent judgment upon the evidence.~~

~~(3)~~ When a subject person to whom an order has been issued pursuant to subdivision (c) or (e) applies to the commissioner for a hearing pursuant to subparagraph (A) of paragraph (1) of subdivision (f), the Office of Administrative Hearings shall schedule the hearing on a priority basis at the earliest possible time and once the hearing is commenced, it shall not be continued for more than three business days without the consent of the subject person.

(4) (3) If the Office of Administrative Hearings cannot schedule the commencement of a hearing within 15 business days as provided by paragraph (1) of subdivision (f), and the subject person does not waive his or her right to a hearing commencing within 15 days, the hearings may be conducted by administrative law judges appointed by the commissioner; the hearing shall be completed within 45 days of commencement, unless additional time is requested by the subject person. If the hearing is not completed within the 45 days, the order shall be deemed rescinded as if it had not been issued. The scheduling of

other hearings before the administrative law judge shall not be considered good cause for purposes of this paragraph.

(j) Nothing in this section is intended to or shall be construed to create a private cause of action against an offending subject person or insurer or production agency that aids and abets a subject person, based on the standards established by this section or the commissioner's findings or orders pursuant to this section.

**Comment.** Subdivision (f) of Section 1748.5 is amended to replace the former reference to a writ of mandate under Code of Civil Procedure Section 1085 with a reference to the provisions for judicial review of Code of Civil Procedure Sections 1120-1123.950. The former provisions in subdivisions (f) and (i) for independent judgment review are superseded by Code of Civil Procedure Section 1123.430 (substantial evidence review of fact-finding).

**Ins. Code § 1780.63 (amended). Judicial review**

1780.63. (a) Any finding, determination, rule, ruling, or order made by the commissioner under this chapter shall be subject to review by the courts of this state, and proceedings on review shall be conducted ~~in accordance with the provisions~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~In proceedings on review, the court shall apply the substantial evidence standard set forth in subdivision (c) of Section 1094.5 of the Code of Civil Procedure.~~

(b) ~~Notwithstanding any other provision of law to the contrary, a petition for judicial review of any finding, determination, rule, ruling, or order of the commissioner may be filed within 30 days after the effective date thereof. Upon application by the advisory organization, a court may for good cause stay or enjoin the effect of any finding, determination, rule, ruling, or order of the commissioner issued pursuant to this chapter.~~

(c) ~~The advisory organization shall have legal standing to bring and defend actions, in the name of the advisory organization, in administrative and judicial proceedings, with all powers attendant thereto, including the right to seek a stay under Section 1123.720 of the Code of Civil Procedure of a finding, determination, rule, ruling, or order of the commissioner issued pursuant to this chapter.~~

**Comment.** Section 1780.63 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former last sentence of subdivision (a) is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review). The former 30-day limit in subdivision (b) is continued in substance in Code of Civil Procedure Section 1123.640. The former language in subdivision (b) permitting the court to order a stay for good cause is continued in substance in Code of Civil Procedure Section 1123.720.

**Ins. Code § 1858.6 (amended). Judicial review**

1858.6. (a) Any finding, determination, rule, ruling or order made by the commissioner under this chapter shall be subject to judicial review ~~by the courts of the State and proceedings on review shall be in accordance with the provisions~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of

Civil Procedure. ~~In such proceedings on review, the court is authorized and directed to exercise its independent judgment on the evidence and unless the weight of the evidence supports the findings, determination, rule, ruling or order of the commissioner, the same shall be annulled.~~

(b) Notwithstanding any other provision of law to the contrary, a petition for review of ~~any such~~ the finding, determination, rule or order, may be filed at any time before the effective date thereof, but in any event no later than the time provided in Section 1123.640 of the Code of Civil Procedure. No such finding, determination, rule, or order shall become effective before the expiration of 20 days after notice and a copy thereof are mailed or delivered to the person affected, and any finding, determination, rule, or order of the commissioner so submitted for review shall not become effective for a further period of 15 days after the petition for review is filed with the court. The court may stay the effectiveness thereof for a longer period under Section 1123.720 of the Code of Civil Procedure.

**Comment.** Section 1858.6 is amended to make clear judicial review is under Code of Civil Procedure Sections 1120-1123.950. The former provision for independent judgment review is superseded by Code of Civil Procedure Section 1123.430 (substantial evidence review of fact-finding).

**Ins. Code § 11754.5 (amended). Judicial review**

11754.5. Any finding, determination, rule, ruling or order made by the commissioner under this article or Article 2 (commencing with Section 11730) shall be subject to judicial review by the courts of the state pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 11754.5 is amended to revise the reference to the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950.

**Ins. Code § 12414.19 (amended). Judicial review**

12414.19. (a) Any finding, determination, rule, ruling, or order made by the commissioner under Article 5.5 (commencing with Section 12401), Article 5.7 (commencing with Section 12402), Article 6.7 (commencing with Section 12414.13), and Article 6.9 (commencing with Section 12414.20) of this chapter shall be subject to judicial review by the courts of the state and proceedings on review shall be in accordance with the provisions under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~In such proceedings on review, the court is authorized and directed to exercise its independent judgment on the evidence and unless the weight of the evidence supports the findings, determination, rule, ruling, or order of the commissioner, the same shall be annulled.~~

(b) Notwithstanding any other provision of law to the contrary, a petition for review of ~~any such~~ the finding, determination, rule or order, may be filed at any time before the effective date thereof, but in any event no later than the time

provided in Section 1123.640 of the Code of Civil Procedure. No such finding, determination, rule, or order shall become effective before the expiration of 20 days after notice and a copy thereof are mailed or delivered to the person or entity affected, and any finding, determination, rule, or order of the commissioner so submitted for review shall not become effective for a further period of 15 days after the petition for review is filed with the court. The court may stay the effectiveness thereof for a longer period under Section 1123.720 of the Code of Civil Procedure.

**Comment.** Section 12414.19 is amended to make clear judicial review is under Code of Civil Procedure Sections 1120-1123.950. The former provision for independent judgment review is superseded by Code of Civil Procedure Section 1123.430 (substantial evidence review of fact-finding).

### Volunteer Fire Departments

#### **Lab. Code § 1964 (amended). Removal of volunteer firefighter; hearing; judicial review**

1964. (a) The governing body of any regularly organized volunteer fire department may, but shall not be required to, adopt regulations governing the removal of volunteer firefighters from the volunteer fire department.

(b) In the event that the governing body chooses to adopt these regulations, it shall have the discretion, after soliciting comments from the membership of the volunteer fire department, to adopt any reasonable regulations which may, but need not, include some or all of the following elements, in addition to other provisions:

(1) Members of the department shall not be removed from membership, except for incompetence, misconduct, or failure to comply with the rules and regulations of the department. Removals, except for absenteeism at fires or meetings, shall be made only after a hearing with due notice, with stated charges, and with the right of the member to a review.

(2) The charges shall be in writing and may be made by the governing body. The burden of proving incompetency or misconduct shall be on the person alleging it.

(3) Hearings on the charges shall be held by the officer or body having the power to remove the person, or by a deputy or employee of the officer or body designated in writing for that purpose.

In case a deputy or other employee is so designated, he or she shall for the purpose of the hearing be vested with all the powers of the officer or body, and shall make a record of the hearing which shall be referred to the officer or body for review with his or her recommendations.

(4) The notice of the hearing shall specify the time and place of the hearing and state the body or person before whom the hearing will be held. Notice and a copy of the charges shall be served personally upon the accused member at least 10 days but not more than 30 days before the date of the hearing.

(5) A stenographer may be employed for the purpose of taking testimony at the hearing.

(6) The officer or body having the power to remove the person may suspend the person after charges are filed and pending disposition of the charges, and after the hearing may remove the person or may suspend him or her for a period of time not to exceed one year.

(7) Volunteer firefighters shall serve a probationary period of a length to be specified by the governing board, not to exceed one year. A probationary volunteer firefighter may be removed from membership without specification of cause. The decision to remove a probationer shall not require notice or a hearing.

(c) The requirement of subdivision (b) to solicit comments from the membership shall not be deemed to create a duty to meet and confer with the membership.

(d) In the event that a governing body of a regularly organized volunteer fire department adopts regulations governing removal of volunteer firefighters, the regulations shall not be interpreted as creating a property right in the volunteer firefighter job or position.

(e) When regulations have been adopted, and where the regulations provide for a hearing and decision by the governing body, a volunteer firefighter may commence a proceeding ~~in accordance with the provisions of Section 1094.5 for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to set aside the decision of the governing body on the ground that the decision is not supported by substantial evidence. The court shall not employ its independent judgment in reviewing the evidence.~~ The proceeding shall be commenced within 90 days from the date that the governing body renders its decision. This remedy shall be the exclusive method for review of the governing body's decision.

**Comment.** Section 1964 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (c) on the standard of review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

## Military Department

### **Mil. & Vet. Code § 489 (amended). Judicial review**

489. Any revenue bondholder may ~~by mandamus or other appropriate proceedings~~, in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, compel the performance of any of the duties imposed upon any state official or employee or imposed upon the department or its officers, agents, or employees with respect to the collection of revenues from pledged contracts entered into by the department with veterans, and the investment and disbursement of the proceeds received from the sale of revenue bonds.

**Comment.** Section 489 is amended to replace the former reference to mandamus or other appropriate proceedings with a reference to the judicial review provisions of the Code of Civil

Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Mil. & Vet. Code § 1005.1. Authorization to compel performance of duty of state official**

1005.1. The holder of any debenture may ~~by mandamus or other appropriate proceedings~~, in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, compel the performance of any of the duties imposed upon any state official or employee or imposed upon the department or its officers, agents or employees with respect to the collection of revenues from pledged contracts entered into by the department with veterans, and the investment and disbursement of the proceeds received from the sale of debentures.

**Comment.** Section 1005.1 is amended to replace the former reference to mandamus or other appropriate proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Local Mental Health Director

**Penal Code § 4011.8 (amended). Voluntary inpatient or outpatient mental health services**

4011.8. (a) A person in custody who has been charged with or convicted of a criminal offense may make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003 of the Welfare and Institutions Code. If ~~such~~ the services require absence from the jail premises, consent from the person in charge of the jail or from any judge of a court in the county in which the jail is located, and from the director of the county mental health program in which services are to be rendered, shall be obtained. The local mental health director or ~~his~~ the director's designee may examine the prisoner prior to transfer from the jail.

(b) Where the court approves voluntary treatment for a jail inmate for whom criminal proceedings are pending, the court shall forthwith notify counsel for the prisoner and the prosecuting attorney about ~~such~~ the approval. Where the person in charge of the jail approves voluntary treatment for a prisoner for whom criminal proceedings are pending, the person in charge of the jail shall immediately notify each court within the county where the prisoner has a pending proceeding about ~~such~~ the approval; upon notification by the jailer the court shall forthwith notify the prosecuting attorney and counsel for the prisoner in the criminal proceedings about ~~such~~ the transfer.

(c) If the prisoner voluntarily obtains treatment in a facility or is placed on outpatient treatment pursuant to Section 5003 of the Welfare and Institutions Code, the time passed therein shall count as part of the prisoner's sentence. When the prisoner is permitted absence from the jail for voluntary treatment, the person in charge of the jail shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released

from the facility before ~~such~~ the expiration date, the professional person in charge shall notify the local mental health director or his the director's designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail, who shall send for, take, and receive the prisoner back into the jail.

(d) A denial of an application for voluntary mental health services by the court shall be reviewable only by mandamus. A denial of an application for voluntary mental health services other than by the court shall be reviewable only in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 4011.8 is amended to add the last sentence to make clear that a denial of an application for voluntary mental health services by an executive branch agency is reviewable only under the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## Department of Justice

### **Penal Code § 11126 (amended). Correction of record**

11126. (a) If the applicant desires to question the accuracy or completeness of any material matter contained in the record, he or she may submit a written request to the department in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and its materiality, and shall specify any proof or corroboration available. Upon receipt of the request, the department shall review the record to determine if the information correctly reflects the source document, and if it does not, the department shall make the necessary corrections and shall provide the applicant with a corrected copy of the record. If the accuracy of the source document is questioned, the department shall forward it to the person or agency which furnished the questioned information. This person or agency shall, within 30 days of receipt of the written request for clarification, review its information and forward to the department the results of the review.

(b) If the agency concurs in the allegations of inaccuracy or incompleteness in the record, and finds that the error is material, it shall correct its record and shall so inform the department, which shall correct the record accordingly. The department shall inform the applicant of its correction of the record under this subdivision within 30 days. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that the notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of the correction of the record, and the applicant shall be informed that the notification has been given.

(c) If the department or the agency denies the allegations of inaccuracy or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code for a determination of whether material inaccuracy or incompleteness exists in the record. The department shall be the respondent in the hearing. If a material inaccuracy or incompleteness is found in any record, the department and the agency in charge of that record shall be directed to correct it accordingly. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that the notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of the correction of the record, and the applicant shall be informed that the notification has been given. Judicial review of the decision shall be governed by Section 11523 of the Government Code under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code.

**Comment.** Section 11126 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

#### Department of Conservation (part 1)

##### **Pub. Res. Code § 2774.2 (amended). Review of administrative penalties**

2774.2. (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the director, for review of the order. If the operator does not petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the director, and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the director setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the lead agency or the director within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) Any operator aggrieved by an order of the legislative body or the board issued under subdivision (c) may obtain review of the order by ~~filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order~~ judicial review. Any operator aggrieved by an order of a lead agency or the director setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order ~~in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of~~ judicial review. The ~~provisions of Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment.~~ If the operator does not petition for a ~~writ of mandate~~ review within the time ~~limits set by this subdivision~~ prescribed by Section 1123.640 of the Code of Civil Procedure, an order of the board or the legislative body shall not be subject to review by any court or agency.

**Comment.** Section 2774.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (e) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former provision in subdivision (e) prescribing the time for judicial review is superseded by Code of Civil Procedure Section 1123.640. The former provision in subdivision (e) for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

**Pub. Res. Code § 2774.4 (amended). Lead agency powers; hearing; review**

2774.4. (a) If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has

corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a), the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

- (1) The action to be taken by the board.
- (2) Why the board decided to take the action.
- (3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by ~~filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision.~~ Section 1094.5 judicial review. Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate judicial review is not filed within the time limits set by this subdivision prescribed by Section 1123.640 of the Code of Civil Procedure, the board's action under subdivision (a) shall not be subject to review by any court or agency.

**Comment.** Section 2774.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (f) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former provision in subdivision (f) prescribing the time for review is superseded by Code of Civil Procedure Section 1123.640. The former provision in subdivision (f) for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

### State Oil and Gas Supervisor

**Pub. Res. Code § 3236.5 (amended). Civil penalties; judicial review**

3236.5. (a) Any person who violates this chapter or any regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Acts of God, and acts of vandalism beyond the reasonable control of the operator, shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity which is alleged to be a violation, the statute violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor in Sacramento or in the district in which the violation occurred. The hearing need not be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of civil liability pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, and (3) the number of prior violations by the same violator.

(b) Notwithstanding any other provision of this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed may obtain judicial review of a final order of the supervisor imposing the penalty ~~by seeking a writ of mandate pursuant to Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~ When the order of the supervisor has become final, and the penalty has not been paid by the violator, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty.

**Comment.** Section 3236.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Pub. Res. Code § 3333 (amended). Judicial review**

3333. (a) A final order of the supervisor shall be subject to judicial review ~~by filing a petition for a writ of mandate in accordance with the provisions of~~

~~Chapter 2 (commencing at Section 1084) of Title 1 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure in the superior court of any county in which all or any part of the area affected is located, except that any such proceedings shall be instituted within 30 days from the date that a certified copy of the transcript of the proceedings before the supervisor has been delivered to the applicant; otherwise, the findings and determination of the supervisor shall be deemed final and conclusive. Any action so filed shall incorporate therein a certified copy of the transcript of the proceedings before the supervisor.~~

~~(b) Notice of intention to petition the superior court for judicial review shall be filed by the applicant or applicants with the supervisor within 60 days after the entry of the final order complained of or within 60 days following the final disposition of any application for rehearing. The notice must identify the order and state the grounds of objection thereto. Immediately upon the filing of such notice a petition for review, the supervisor shall certify to the applicant or applicants the estimated cost of preparing the transcript of the proceedings before the supervisor. The amount of the estimated cost shall be deposited with the supervisor within 10 days after the mailing of the certification of such the cost to the applicant or applicants. Upon the deposit of the cost the supervisor shall order the preparation of the transcript. A certified copy of the transcript shall be delivered to the applicant or applicants within 60 days from the date of the filing of said notice of intention the petition for review unless such the time is extended for good cause by the supervisor, but in no event later than 90 days from the date of filing of such notice the petition.~~

**Comment.** Section 3333 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former requirement specifying the time for judicial review is superseded by Code of Civil Procedure Section 1123.640. The special provision in subdivision (a) for venue in the superior court of any county in which all or part of the area affected is located prevails over the general venue provision in Code of Civil Procedure Section 1123.520. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls).

The former provision in subdivision (b) for a notice of intention to petition for judicial review is deleted as superfluous, since the petition itself must generally be filed within 60 days after the order. See Code Civ. Proc. § 1123.640 and Comment.

## Department of Conservation (part 2)

### **Pub. Res. Code § 14591.5 (amended). Judgment to collect civil penalties or restitution**

14591.5. After the time for judicial review under Section 11523 ~~of the Government Code~~ 1123.640 of the Code of Civil Procedure has expired, the department may apply to the clerk of the small claims court, municipal court, or superior court, depending on the jurisdictional amount and any other remedy sought, in the county where the penalties, restitution, or other remedy was imposed by the department, for a judgment to collect any unpaid civil penalties or restitution or to enforce any other remedy provided by this division. The

application, which shall include a certified copy of the final agency order or decision, shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. The court shall make enforcement of the judgment a priority.

**Comment.** Section 14591.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### State Energy Resources Conservation and Development Commission

#### **Pub. Res. Code § 25534.2 (amended). Judicial review; action to recover penalties**

25534.2. (a) ~~Within 30 days after service of an order issued under Section 25534.1, any~~ An aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 seek judicial review of an order issued under Section 25534.1 by petition under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. If no aggrieved party petition for a writ of mandate judicial review is filed within the time provided by ~~this section~~ Section 1123.640 of the Code of Civil Procedure, an order of the commission is not subject to review by any court or agency, except that the commission may grant review on its own motion of an order issued under Section 25534.1 after the expiration of the time limits set by this section.

(b) Upon request of the commission, the Attorney General shall institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Section 25534.1. The court shall accord priority on its calendar to any action under this subdivision.

(c) Any moneys recovered by the commission pursuant to this section shall be deposited in the General Fund.

**Comment.** Section 25534.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in Section 25534.2 prescribing the time for review is superseded by Code of Civil Procedure Section 1123.640.

#### **Pub. Res. Code § 25901 (amended). Judicial review**

25901. (a) ~~Within 30 days after the commission issues its determination on any matter specified in this division, except~~ Except as provided in Section 25531, any aggrieved person may file with the superior court a petition for a writ of mandate for judicial review thereof of the commission's determination on any matter specified in this division. Failure to file such an action petition for judicial review does not preclude a person from challenging the reasonableness and validity of a decision in any judicial proceedings brought to enforce the decision or to obtain other civil remedies.

~~(b) The decision of the commission shall be sustained by the court unless the court finds (1) that the commission proceeded without, or in excess of its jurisdiction, (2) that, based exclusively upon a review of the record before the commission, the decision is not supported by substantial evidence in light of the whole record, or (3) that the commission failed to proceed in the manner required by law.~~

~~(c) Except as otherwise provided in this section, subdivisions (f) and (g) of Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure govern proceedings pursuant to this section.~~

~~(d) (c) The amendment of this section made at the 1989-90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, existing law.~~

**Comment.** Section 25901 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The standards of review formerly in subdivision (b) are superseded by Code of Civil Procedure Sections 1123.420-1123.460.

<p>☞ <b>Note.</b> The judicial review statute does not apply to power plant siting decisions of the Energy Commission. However, Energy Commission matters now reviewed in superior court are made subject to the draft statute, as above.</p>
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## California Alternative Energy and Advanced Transportation Financing Authority

### **Pub. Res. Code § 26034 (amended). Rights and remedies of bondholder**

26034. Any holder of bonds, notes, or other obligations issued under the provisions of this division or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, ~~such the~~ bonds, notes, or other obligations, may, either at law or in equity, by suit, action, mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under ~~such the~~ resolution or trust agreements, and may enforce and compel the performance of all duties required by this division or by ~~such the~~ resolution or trust agreement to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges herein authorized and required by the provisions of ~~such the~~ resolution or trust agreement to be fixed, established, and collected.

**Comment.** Section 26034 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## San Francisco Bay Conservation and Development Commission (part 2)

### **Pub. Res. Code § 29602 (amended). Judicial review**

29602. ~~Any aggrieved~~ A person may seek judicial review of any decision or action of the commission ~~by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure . Except as provided in Section 1123.640 of the Code of Civil Procedure, judicial review shall be sought within 60 days after such decision or action has become final.~~

**Comment.** Section 29602 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision permitting an “aggrieved” person to seek judicial review is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). The provision requiring review to be sought within 60 days is made subject to Code of Civil Procedure Section 1123.640 (time limit for review of adjudication).

### **Pub. Res. Code § 29603 (amended). Judicial review**

29603. ~~Any aggrieved~~ A person, including an applicant for a marsh development permit, or the commission, may seek judicial review of any decision made or any action taken pursuant to this division by a local government that is implementing the certified local protection program, or any component thereof, whether or not ~~such~~ the decision or action has been appealed to the commission, ~~by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure . Except as provided in Section 1123.640 of the Code of Civil Procedure, judicial review shall be sought within 60 days after the decision or action has become final. The commission may intervene in any such~~ the proceeding upon a showing that the matter involves a question of the conformity of a proposed development with the certified local protection program, or any component thereof, or the validity of any action taken by a local government to implement or amend the local protection program, or any component thereof. Any local government may request that the commission intervene. Notice of ~~any such~~ the action against a local government shall be filed with the commission within five working days of the filing of ~~such~~ the action. When an action is brought challenging the validity of the local protection program, or any component thereof or any amendment thereto, a preliminary showing shall be made prior to proceeding on the merits as to why ~~such~~ the action should not have been brought pursuant to the provisions of Section 29602.

**Comment.** Section 29603 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision permitting an “aggrieved” person to seek judicial review is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). The provision permitting an applicant for a marsh development permit or the commission to seek judicial review is a special provision that controls over the general standing rules of Code of Civil Procedure Sections 1123.210-1123.240. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls). The

provision requiring review to be sought within 60 days is made subject to Code of Civil Procedure Section 1123.640 (time limit for review of adjudication).

### Delta Protection Commission

#### **Pub. Res. Code § 29772 (amended). Judicial review**

29772. ~~An aggrieved~~ A person may seek judicial review of any action taken by the commission in adopting the regional plan or by a local government that is appealable pursuant to subdivision (a) of Section 29770, ~~by filing a petition for writ of mandate in accordance with Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure . Except as provided in Section 1123.640 of the Code of Civil Procedure,~~ judicial review shall be sought within 60 days after the date that the action was taken or, if appealed to the commission, within 60 days after the final decision of the commission.

**Comment.** Section 29772 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision permitting an “aggrieved” person to seek judicial review is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). The provision requiring review to be sought within 60 days is made subject to Code of Civil Procedure Section 1123.640 (time limit for review of adjudication).

### California Coastal Commission

#### **Pub. Res. Code § 30801 (amended). Judicial review**

30801. (a) Any aggrieved person or any person authorized by Title 2 of Part 3 of the Code of Civil Procedure shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, . Except as provided in Section 1123.640 of the Code of Civil Procedure, judicial review shall be sought within 60 days after the decision or action has become final.

(b) For purposes of this section and subdivision (c) of Section 30513 and Section 30625, an “aggrieved person” means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his the person’s concerns or who for good cause was unable to do either. “Aggrieved person” includes the applicant for a permit and, in the case of an approval of a local coastal program, the local government involved.

**Comment.** Section 30801 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The provision requiring review to be sought within 60 days is made subject to Code of Civil Procedure Section 1123.640 (time limit for review of adjudication).

**Pub. Res. Code § 30802 (amended). Judicial review of action of local government**

30802. Any person, including an applicant for a permit or the commission, aggrieved by the decision or action of a local government that is implementing a certified local coastal program or certified port master plan, or is exercising its powers pursuant to Section 30600.5, which decision or action may not be appealed to the commission, shall have a right to judicial review of ~~such the~~ decision or action ~~by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure . Except as provided in Section 1123.640 of the Code of Civil Procedure,~~ judicial review shall be sought within 60 days after the decision or action has become final. The commission may intervene in ~~any such the~~ proceeding upon a showing that the matter involves a question of the conformity of a proposed development with a certified local coastal program or certified port master plan or the validity of a local government action taken to implement a local coastal program or certified port master plan. Any local government or port governing body may request that the commission intervene. Notice of this action against a local government or port governing body shall be filed with the commission within five working days of the filing of this action. When an action is brought challenging the validity of a local coastal program or certified port master plan, a preliminary showing shall be made prior to proceeding on the merits as to why ~~such the~~ action should not have been brought pursuant to the provisions of Section 30801.

**Comment.** Section 30802 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The provision requiring review to be sought within 60 days is made subject to Code of Civil Procedure Section 1123.640 (time limit for review of adjudication).

California Urban Waterfront Area Restoration Financing Authority

**Pub. Res. Code § 32205 (amended). Action to enforce rights**

32205. Any holder of bonds, notes, or other obligations issued under this division or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given which may be restricted by any resolution authorizing the issuance of, or the trust agreement securing, the bonds, notes, or other obligations, may, either at law or in equity, by suit, action, mandamus proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under the resolution or trust agreements, and may enforce and compel the performance of all duties required by this division or by the resolution or trust agreement to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of the rates, rents, fees, and charges authorized by this division and required by the resolution or trust agreement to be fixed, established, and collected.

**Comment.** Section 32205 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

## California Integrated Waste Management Board

### **Pub. Res. Code § 41721.5 (amended). Amendments**

41721.5. (a) Any amendments to the countywide siting element shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county except in those counties which have only two cities, in which case the amendment is subject to approval of the city which contains the majority of the population of the incorporated area of the county.

(b) Any person or public agency proposing the development of a solid waste disposal or transformation facility may initiate an amendment to the countywide siting element by submitting a site identification and description to the county board of supervisors.

(c) The county shall submit the site identification and description to the cities within the county within 20 days after the site identification and description is submitted to the county board of supervisors. Each city shall act upon the proposed amendment within 90 days after receipt of the proposed amendment. If a city fails to act upon the proposed amendment within 90 days after receiving the amendment, the city shall be deemed to have approved the proposed amendment as submitted.

(d) If the county or a city disapproves the proposed amendment, the county or city shall mail notice of its decision by first-class mail to the person or public agency proposing the amendment within 10 days of the disapproval, stating its reasons for the disapproval.

(e) No county or city shall disapprove a proposed amendment unless it determines, based on substantial evidence in the record, that the amendment would cause one or more significant adverse impacts within its boundaries from the proposed project.

(f) Within 45 days after the date of disapproval by the county or a city of a proposed amendment, or a decision by the board not to concur in the issuance, modification, or revision of a solid waste facilities permit pursuant to Section 44009, any person may ~~file with the superior court a writ of mandate for~~ seek judicial review of the disapproval or the decision. The evidence before the court shall consist of the record before the county or city which disapproved the proposed amendment or the record before the board in its determination not to concur in issuance, modification, or revision of the solid waste facilities permit. Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

**Comment.** Section 41721.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Pub. Res. Code § 42854 (amended). Judicial review**

42854. (a) ~~Within 30 days after service of a copy of a decision issued by the hearing officer, any~~ A person so served with a copy of the decision issued by the hearing officer may file with the Superior court a petition for writ of mandate for judicial review of the decision. Any person who fails to file the petition within the 30-day period prescribed by Section 1123.640 of the Code of Civil Procedure may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies.

(b) Except as otherwise provided in this section, ~~Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure governs any proceedings conducted pursuant to this subdivision section. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record.~~

~~(c) The filing of a petition for writ of mandate does not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter.~~

~~(d) This section does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

**Comment.** Section 42854 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former 30-day time period in subdivision (a) is superseded by Code of Civil Procedure Section 1123.640. The former requirement that the petition be filed in superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former provision in subdivision (b) for substantial evidence review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

Former subdivision (c) (petition for writ of mandate does not stay corrective action or penalties) is continued in substance in Code of Civil Procedure Section 1123.720(a).

**Pub. Res. Code § 45802 (amended). Governing provisions**

45802. Except as otherwise provided in this chapter, ~~subdivisions (e) and (f) of Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure govern~~ governs proceedings pursuant to this article.

**Comment.** Section 45802 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Pub. Res. Code § 50000 (amended). Review and approval of new sites**

50000. (a) Until an integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish a new solid waste facility or transformation facility or expand an existing solid waste facility or

transformation facility which will result in a significant increase in the amount of solid waste handled at the facility without a certification by the enforcement agency that one of the following has occurred:

(1) The facility is identified and described in or found to conform with a county solid waste management plan which was in compliance with statutes and regulations in existence on December 31, 1989, adopted pursuant to former Title 7.3 (commencing with Section 66700) of the Government Code as that former statute read on December 31, 1989. The conformance finding with that plan shall be in accordance with the procedure for a finding of conformance which was set forth in the plan prior to January 1, 1990.

(2) The facility is identified and described in the most recent county solid waste management plan which has been approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case, the plan has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(3) Pursuant to the procedures in subdivision (b), the facility has been approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case, the facility has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(4) The facility is a material recovery facility and the site identification and description of the facility has been submitted to the task force created pursuant to Section 40950 for review and comment, pursuant to the procedures set forth in subdivision (c). For purposes of this paragraph, "material recovery facility" means a transfer station which is designed to, and, as a condition of its permit, shall, recover for reuse or recycling at least 15 percent of the total volume of material received by the facility.

(5) The facility is identified and described in the countywide siting element which has been approved pursuant to Section 41721.

(b)(1) The review and approval of a solid waste facility or facility transformation facility which has not been identified or described in a county solid waste management plan shall be initiated by submittal by the person or agency proposing the facility of a site identification and description to the county board of supervisors.

(2) The county shall submit the site identification and description to each city within the county within 20 days from the date that the site identification and description is submitted to the county board of supervisors. The county and each city shall approve or disapprove by resolution the site identification and description within 90 days from the date that the site identification and description is initially submitted to the county or city. Each city shall notify the

county board of supervisors of its decision within that 90-day period. If the county or a city fails to approve or disapprove the site identification and description within 90 days, the city or county shall be deemed to have approved the site identification and description as submitted.

(3) If a city or county disapproves the site identification and description, the city or county shall mail notice of its decision by first-class mail to the person or agency requesting the approval within 10 days of the disapproval by the city or county, stating its reasons for the disapproval.

(4) No county or city shall disapprove a proposed site identification and description for a new solid waste facility or transformation facility or an expanded solid waste facility or transformation facility which will result in a significant increase in the amount of solid waste handled at the facility unless it determines, based upon substantial evidence in the record, that there will be one or more significant adverse impacts within its boundaries from the proposed project.

(5) Within 45 days from the date of a decision by a city or county to disapprove a site identification and description, or a decision by the board not to concur in the issuance of a permit pursuant to Section 44009, any person may ~~file with the superior court a writ of mandate for~~ seek judicial review of the decision. The evidence before the court shall consist of the record before the city or county which disapproved the site identification and description or the record before the board in its determination not to concur in issuance of the permit. ~~Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.~~

(c) To initiate the review and comment by the task force required by paragraph (4) of subdivision (a) and subdivision (d), the person or agency proposing the facility shall submit the site identification and description of the facility to the task force. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the facility in writing. Those comments shall include, but are not limited to, the relationship between the proposed new or expanded material recovery facility and the requirements of Section 41780. The task force shall transmit those comments to the applicant, to the county, and to all of the cities in the county.

(d) On or before February 1, 1991, each county, by vote of the board of supervisors and the majority of the cities in the county containing a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case the vote is subject to approval of the city which contains a majority of the population of the incorporated area of the county, shall adopt two resolutions after holding a public hearing. One resolution shall address solid waste transfer facilities which are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15 percent of the total volume of material received by the facility and which serve more than one jurisdiction. The second resolution shall address solid waste transfer facilities which are designed to, and, as a condition of their permits, shall, recover for reuse

or recycling less than 15 percent of the total volume of material received by the facility and which serve only one jurisdiction. These resolutions shall specify whether the facilities shall be subject to the review and approval process described in subdivision (b) or the review and comment process described in subdivision (c). If the resolutions required by this subdivision are not adopted on or before February 1, 1991, those facilities shall be subject to the review process described in subdivision (c).

For purposes of this subdivision, a facility serves only one jurisdiction if it serves only one city, only the unincorporated area of one county, or only one city and county.

**Comment.** Section 50000, *as amended* by Chapter 1038 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### Municipal Utility Districts

#### **Pub. Util. Code § 13106 (amended). Rights and remedies of bond holders**

13106. The provisions of any resolution constituting a part of the proceedings for the issuance of any bonds under this chapter, when so declared by its terms, or by the terms of any other such resolution, shall constitute a contract between the district and the holders of such the bonds, and the provisions thereof shall be enforceable by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction.

**Comment.** Section 13106 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

#### **Pub. Util. Code § 13575.7 (amended). Judicial review; nonexclusiveness of remedy**

13575.7. (a) ~~Within 30 days after service of a copy of a decision and order issued by the board pursuant to Section 13575.5, any~~ An aggrieved party may file with the superior court a petition for writ of mandate for judicial review thereof of a decision and order of the board issued pursuant to Section 13575.5. Failure to file a petition for judicial review shall not preclude a party from challenging the reasonableness and validity of a decision or order of a hearing officer or the board in any judicial proceedings brought to enforce that decision or order or for other civil remedies.

(b) ~~The evidence before the court shall consist of the record before the board, including the hearing officer's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division. In every such case, the court shall exercise its independent judgment on the evidence.~~

~~(e) Except as otherwise provided in this section, subdivisions (e) and (f) of Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure shall govern proceedings pursuant to this section.~~

**Comment.** Section 13575.7 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) specifying the time limit for review is superseded by Code of Civil Procedure Section 1123.640. The former first sentence of subdivision (b) concerning the contents of the record is superseded by Code of Civil Procedure Sections 1123.820 (contents of administrative record) and 1123.850 (new evidence on judicial review). The former last sentence of subdivision (b) (independent judgment) is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

### California Transportation Commission (part 1)

#### **Pub. Util. Code § 21675.2 (amended). Judicial review; public notice**

21675.2. (a) If a commission fails to act to approve or disapprove any actions, regulations, or permits within 60 days of receiving the request pursuant to Section 21675.1, the applicant or his or her representative may ~~file an action pursuant to Section 1094.5~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to compel the commission to act, and the court shall give the proceedings preference over all other actions or proceedings, except previously filed pending matters of the same character.

(b) The action, regulation, or permit shall be deemed approved only if the public notice required by this subdivision has occurred. If the applicant has provided seven days advance notice to the commission of the intent to provide public notice pursuant to this subdivision, then, not earlier than the date of the expiration of the time limit established by Section 21675.1, an applicant may provide the required public notice. If the applicant chooses to provide public notice, that notice shall include a description of the proposed action, regulation, or permit substantially similar to the descriptions which are commonly used in public notices by the commission, the location of any proposed development, the application number, the name and address of the commission, and a statement that the action, regulation, or permit shall be deemed approved if the commission has not acted within 60 days. If the applicant has provided the public notice specified in this subdivision, the time limit for action by the commission shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the commission shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65946, inclusive, of the Government Code, may constitute grounds for disapproval of actions, regulations, or permits.

(d) Nothing in this section diminishes the commission's legal responsibility to provide, where applicable, public notice and hearing before acting on an action, regulation, or permit.

**Comment.** Section 21675.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Aeronautics,  
Business and Transportation Agency

**Pub. Util. Code § 24252 (amended). Judicial review**

24252. Any person aggrieved by any rule, regulation, order or act of the department or by a failure of the department to act hereunder, may have judicial review thereof ~~as provided in Sections 11440 and 11523 of the Government Code under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 24252 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to Government Code Section 11440 is obsolete because it was repealed by 1979 Cal. Stat. ch. 567.

Southern California Rapid Transit District

**Pub. Util. Code § 30981 (amended). Rights and remedies of bond holders**

30981. Notwithstanding any other provisions of this part of any other law, the provisions of all ordinances, resolutions and other proceedings in the issuance by the district of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of ~~such~~ the bonds, equipment trust certificates, notes or evidences of indebtedness or liability and the provisions thereof shall be enforceable against the district, any or all of its successors or assigns, the state, any department of the state, or any officer thereof, by ~~mandamus~~ a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this part or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district or withdrawn therefrom shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of ~~such~~ the dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the state or other successors or assigns to provide for the payment of ~~such~~ the bonded and other indebtedness and liabilities. Except as may be otherwise provided in the proceedings for the

authorization, issuance and sale of any revenue bonds, bonds secured by a pledge of revenues or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities or property owned, operated or controlled by the district shall be pledged, charged, assigned and have a lien thereon for the payment of ~~such~~ the bonds as long as the same are outstanding, regardless of any change in ownership, operation or control of ~~such~~ the revenue-producing improvements, works, facilities or property and it shall, in ~~such~~ the later event or events, be the duty of the state or other successors or assigns to continue to maintain and operate ~~such~~ the revenue-producing improvements, works, facilities or property as long as bonds are outstanding.

**Comment.** Section 30981 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Santa Clara County Transit District

#### **Pub. Util. Code § 100492 (amended). Rights and remedies of bond holders**

100492. Notwithstanding any other provisions of this part or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the district of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of ~~such~~ the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability and the provisions thereof shall be enforceable against the district, or any or all of its successors or assigns, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this part or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district or withdrawn therefrom shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of ~~such~~ the dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of ~~such~~ the bonded and other indebtedness and liabilities. Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated or controlled by the

district shall be pledged, charged, assigned, and have a lien thereon for the payment of ~~such~~ the bonds as long as they are outstanding, regardless of any change in ownership, operation, or control of ~~such~~ the revenue-producing improvements, works, facilities, or property and it shall, in ~~such~~ the later event or events, be the duty of the successors or assigns to continue to maintain and operate ~~such~~ the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

**Comment.** Section 100492 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### Sacramento Regional Transit District

#### **Pub. Util. Code § 102602 (amended). Rights and remedies of bond holders**

102602. Notwithstanding any other provisions of this part or any other law, the provisions of all ordinances, resolutions and other proceedings in the issuance by the district of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of ~~such~~ the bonds, equipment trust certificates, notes or evidences of indebtedness or liability, and the provisions thereof shall be enforceable against the district, any or all of its successors or assigns, the state, any department of the state, or any officer thereof, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action, or proceeding in law, or in equity, in any court of competent jurisdiction. Nothing contained in this part, or in any other law, shall be held to relieve the district, or the territory included within it, from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of ~~such~~ the dissolution or withdrawal the same as if the district had not been so dissolved, or the territory withdrawn therefrom, and it shall be the duty of the state or other successors or assigns to provide for the payment of ~~such~~ the bonded and other indebtedness and liabilities. Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the district shall be pledged, charged, assigned and have a lien thereon for the payment of ~~such~~ the bonds as long as the same are outstanding, regardless of any change in ownership, operation, or control of ~~such~~ the revenue-

producing improvements, works, facilities, or property and it shall, in ~~such~~ the later event or events, be the duty of the state or other successors or assigns to continue to maintain and operate ~~such~~ the revenue-producing improvements, works, facilities or property as long as bonds are outstanding.

**Comment.** Section 102602 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### San Mateo County Transit District

#### **Pub. Util. Code § 103602 (amended). Rights and remedies of bond holders**

103602. Notwithstanding any other provisions of this part or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the district of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of ~~such~~ the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof shall be enforceable against the district, or any or all of its successors or assigns, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this part or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of ~~such~~ the dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of ~~such~~ the bonded and other indebtedness and liabilities. Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the district shall be pledged, charged, assigned and have a lien thereon for the payment of ~~such~~ the bonds as long as the same are outstanding, regardless of any change in ownership, operation, or control of ~~such~~ the revenue-producing improvements, works, facilities, or property and it shall, in ~~such~~ the later event or events, be the duty of the successors or assigns to continue to maintain and operate ~~such~~ the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

**Comment.** Section 103602 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## San Diego Metropolitan Transit Development Board

### **Pub. Util. Code § 120702 (amended). Rights and remedies of bond holders**

120702. Notwithstanding any other provisions of this division or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the board of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability constitute a contract between the board and the holders of the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the board or any or all of its successors or assigns, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction.

Nothing in this division or in any other law shall be held to relieve the board or the territory included within it from any bonded or other debt or liability contracted by the board. Upon dissolution of the board or upon withdrawal of territory therefrom, that territory formerly included within the board, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the board had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the board shall be pledged, charged, assigned, and have a lien thereon for the payment of the bonds as long as they are outstanding, regardless of any change in ownership, operation, or control of the revenue-producing improvements, works, facilities, or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

**Comment.** Section 120702 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## West Bay Rapid Transit Authority

### **Pub. Util. Code Appendix 2 § 10.1 (amended). Rights and remedies of bond holders**

10.1. The holder of any bond issued pursuant to this act may for the equal benefit and protection of all holders of bonds similarly situated, (a) ~~by mandamus or other appropriate proceeding in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ require and compel the performance of any of the duties imposed upon the authority or assumed by it, its officers, agents or employees, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the system, or the collection, deposit, investment, application and disbursement of rates, fares, tolls or charges and all other revenues derived from the operation and use of the system or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds under this act; (b) by action or suit in equity, require the authority to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds or apply for the appointment of a receiver of the system; or (c) by action or suit in equity, apply for the appointment of a receiver of the system and of the business and assets of the authority, if the authority is insolvent or in imminent danger of insolvency, or if in any other circumstances a receiver of the system may properly be appointed according to the usages of courts of equity. The enumeration of ~~such~~ these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this act.

**Comment.** Section 10.1 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

## County Boards of Supervisors (part 3)

### **Rev. & Tax. Code § 1611.6 (technical amendment). Attorney's fees**

1611.6. If the county board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county board is ordered to secure reasonable compliance with the elements of findings required by Section 1611.5, the action of the county board shall be deemed to be arbitrary and capricious within the meaning of Section ~~800~~ 1123.950 of the ~~Government Code of Civil Procedure,~~ so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings. The dollar limitation set forth in Section ~~800~~ 1123.950 of the ~~Government Code of Civil Procedure~~ shall not apply to an allowance of attorney's fees pursuant to this section.

**Comment.** Section 1611.6 is amended to revise the references to former Section 800 of the Government Code.

Cities and Counties (part 5)

**Sts. & Hy. Code § 5302.5 (amended). Assessment as obligation of owner of property; time for payment; collection of tax levy; judicial review**

5302.5. (a) If the legislative body, in the resolution of intention, declares that any lot or parcel of land owned and used as provided in Section 5301 shall be included in the assessment, or if no declaration is made respecting ~~any such~~ the lot or parcel of land then any assessment upon ~~such~~ the lot or parcel of land, except any lot or parcel owned by the United States or any department thereof or by the State of California or any department thereof, shall be an enforceable obligation against the owner of ~~such~~ the property and shall be paid, within 30 days after the date of recording the assessment, by the officer, officers, or board having charge of the disbursement of the funds of the owner of ~~such~~ the lot or parcel of land and, if not paid within ~~said~~ 30 days, shall bear interest until paid at the rate stated in the resolution of intention for the bonds proposed to be issued, and if no bonds are proposed to be issued then at the rate of not more than 7 percent per annum until paid; provided, however, that if ~~said~~ the assessment is not paid within ~~said~~ the 30-day period the city may, and if the city has so provided in its resolution of intention shall, at the expiration thereof, forthwith advance the necessary sum and pay the assessment and shall collect the amount of ~~said~~ the assessment and interest thereon from the ~~said~~ obligated owner and may enforce the collection thereof by writ of mandate or other proper remedy. If for any reason there are no moneys available for the payment of ~~said~~ the assessment, then the legislative body of the public entity which owns ~~said~~ the property so assessed may elect to cause ~~said~~ the assessment to be payable in a number of installments not to exceed the number of installments of and at the same interest rate as bonds issued in the proceedings creating the assessment, or if no bonds are to be issued, for a number of installments not to exceed the number of installments of annual payments as provided by Section 6462 of this code for payment of bonds issued under the provisions of this division and for a rate of interest to be specified. In the event the legislative body of the entity whose property is assessed decides that ~~said~~ the assessment shall be payable in installments, then the officer, officers or board whose duty it is to levy taxes for ~~said~~ the obligated owner, including school districts but not limited thereto, shall include in the next tax levy an amount, in addition to moneys for all other purposes, sufficient to pay the annual installment of principal and interest upon ~~said~~ the assessment with interest on the unpaid principal of the assessment to date of the payments, and shall include in each succeeding tax levy a like amount or more, in addition to moneys for all other purposes, until the principal of ~~said~~ the assessment and all interest on unpaid portions thereof, shall be paid in full. ~~Said~~ The tax levy shall be made notwithstanding that ~~said~~ the tax levy exceeds the maximum tax rate which may otherwise be imposed by law. In the event the officer, officers or board whose duty it is to levy taxes fails to provide for a tax levy to pay and discharge the

principal of the assessment and the interest thereon, the owner of the assessment may compel the levy thereof in the manner hereinabove set forth by writ of mandate in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. No statute of limitations shall bar any right provided for herein to enforce the collection of an assessment of the type described herein and any interest due thereon until four years after the due date of the last principal payment due upon said the assessment. The owner of an assessment described herein may use ~~mandamus or other appropriate remedy~~ a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to compel the officer, officers or board whose duty it is to levy taxes for said the obligated owner to levy an amount in a given year equal to the amount necessary to pay the installment of principal and interest on the assessment in said that year, and may continue to use ~~mandamus or other remedy~~ a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to cause like installments of the amount of principal and interest accruing to be levied each year until the whole of the assessment due has been paid.

(b) If the owner of an assessment is successful in any ~~action proceeding~~ to compel the levy of a tax under this section ~~he~~ the owner shall be awarded reasonable attorneys' fees as fixed by the court and costs and said the attorneys' fees and costs shall be included in said the tax levy.

**Comment.** Section 5302.5 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

 **Note.** There are no cases under Section 5302.5 applying the "other appropriate remedy" language. The only three cases under this section are mandamus cases. *City of San Marcos v. Board of Supervisors*, 159 Cal. App. 3d 355, 205 Cal. Rptr. 566 (1984) (mandamus to require county to impose a tax); *County of Santa Barbara v. City of Santa Barbara*, 59 Cal. App. 3d 364, 130 Cal. Rptr. 615 (1976) (mandamus to require city to set aside assessment); *City of Saratoga v. Huff*, 24 Cal. App. 3d 978, 101 Cal. Rptr. 32, 102 Cal. Rptr. 376 (1972) (mandamus to require city clerk to give notice of sale of assessment bonds).

**Sts. & Hy. Code § 6467 (amended). Certificates representing unpaid assessments**

6467. In the event there are unpaid assessments levied against public property which are payable as provided in Section 5302.5 of this code, the treasurer shall, simultaneously with the issuance of bonds, if bonds are to be issued in the proceedings, issue certificates representing assessments against public property. A separate certificate shall be issued to represent each assessment against public property. The certificates will provide for payment thereof as provided in Section 5302.5, and each certificate shall read substantially as follows:

United States of America

State of California County of \_\_\_\_\_

Certificate of Ownership of Assessment Against Public Property

Pursuant to the provisions of Sections 5301 and 5302.5 of Division 7, Part 3, Chapter 13 of the Streets and Highways Code of the State of California, (Improvement Act of 1911), and pursuant to proceedings taken by the \_\_\_\_\_ of the \_\_\_\_\_, County of \_\_\_\_\_, State of California, under the provisions of Division \_\_\_\_\_, of the Streets and Highways Code, the undersigned treasurer of \_\_\_\_\_ does hereby certify as follows:

1. The \_\_\_\_\_ of \_\_\_\_\_ by Resolution of Intention No. \_\_\_\_\_, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and proceedings subsequent thereto, levied an assessment against property owned by \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_).

2. Said assessment was levied on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; notice thereof was recorded in the office of the County Recorder of the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

3. Said assessment was levied in an assessment district known and described as “\_\_\_\_\_.”

4. The assessment number of said property, as shown on the assessment diagram and in the assessment roll is No. \_\_\_\_\_, and the property designated as assessment number \_\_\_\_\_ and which belongs to \_\_\_\_\_ is described as follows:

(insert description)

5. Said assessment is payable in not more than \_\_\_\_\_ (\_\_\_\_) annual installments, the first installment of which shall be June 2, 19\_\_\_\_, and the last of which will be payable June 2, 19\_\_\_\_. Said installments will be in even annual proportions of the whole amount. Payments of principal shall be represented by coupons attached to said certificate.

6. Interest will accrue upon said unpaid amount from the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the rate of \_\_\_\_\_ percent per annum until the whole of the principal and interest thereon shall have been paid in full. The interest is payable semiannually, by coupon, on the second day of December and June, respectively, of each year a principal payment coupon matures.

7. The officer or board whose duty it is to levy taxes on behalf of the owner of said property hereinabove described, is obligated to include in the next tax levy an amount, in addition to moneys for all other purposes, sufficient to pay \_\_\_\_\_ (\_\_\_\_) or more of the principal of said assessment with interest on the unpaid principal of the assessment to date of payment and is obligated to include in each succeeding tax levy a like \_\_\_\_\_ (\_\_\_\_) amount or more in addition to moneys for all other purposes until the principal of said assessment and all interest on the unpaid portions thereof shall be paid. Said tax levy shall be made notwithstanding that said tax levy exceeds the maximum tax rate that may otherwise be imposed by law.

8. In the event that the officer or board whose duty it is to levy taxes fails to provide for a tax levy to pay and discharge the principal of the assessment and the interest thereon, the owner of this certificate may compel the levy thereof in the manner hereinabove set forth by writ of mandate in a proceeding for judicial

review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. No statute of limitations shall bar any right provided for herein to enforce the collection of this assessment and any interest due thereon until four years after the maturity of the last coupon of principal and interest due on this certificate.

9. The owner of this certificate described herein may use ~~mandamus or other appropriate remedy~~ a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to compel the officer or board whose duty it is to levy taxes for said obligated owner to levy an amount in a given year equal to \_\_\_\_\_ (—) of said assessment and interest on the unpaid portion thereof and may continue to use ~~mandamus or other remedy~~ a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to cause a like \_\_\_\_\_ (—) amount and interest to be levied each year until the whole of said assessment and all interest due has been paid.

10. If an owner of this certificate is successful in any ~~action~~ proceeding to compel the levy of a tax under this certificate ~~he~~ the owner shall be awarded reasonable attorneys' fees as fixed by the court and costs and said attorneys' fees and costs shall be included in the tax levied to pay the same.

11. This certificate together with interest is payable to bearer at the office of the \_\_\_\_\_ treasurer of the \_\_\_\_\_ of \_\_\_\_\_ upon presentation of the coupons representing principal and interest thereon. Upon payment in full it shall be surrendered to the \_\_\_\_\_ treasurer for cancellation.

In witness whereof, said \_\_\_\_\_ has caused this certificate to be signed by its treasurer and has caused its clerk to affix thereto its corporate seal all on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Treasurer

**Comment.** Section 6467 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

**Sts. & Hy. Code § 6468 (amended). Form of bond**

6468. In addition to the method of collecting unpaid assessments against publicly owned property in use in the performance of a public function, as provided in Section 5302.5, and in addition to the issuance of the certificate provided in Section 6467, the legislative body may elect to have bonds issued to represent assessments against ~~such~~ the publicly owned property as authorized in Section 5302.6 and as authorized in this chapter.

~~Such~~ The bonds shall be substantially in the following form:

STREET IMPROVEMENT BOND  
Series (designating it), in the City (or County)

of (naming it)

§ \_\_\_\_\_

No. \_\_\_\_\_

(Assessment number)

This bond is issued under and by virtue of the provisions of Chapter 4.5 (commencing with Section 6468), Part 5, Division 7 of the Streets and Highways Code as a result of proceedings taken by the legislative body of \_\_\_\_\_ (under the provisions of the Improvement Act of 1911) (under the provisions of the Municipal Improvement Act of 1913) and is payable out of the redemption fund for the payment of bonds issued to represent the unpaid assessments against publicly owned property owned by the City (County) of \_\_\_\_\_ hereinafter designated.

This bond is issued to represent the cost of certain public improvements benefiting ~~such~~ the public property, which property is more fully described as assessment number(s) \_\_\_\_\_ in an assessment issued by the street superintendent of said \_\_\_\_\_ and recorded in ~~his~~ the superintendent's office.

Said assessment was levied on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in an assessment district known and described as “ \_\_\_\_\_”; notice thereof was recorded in the office of the County Recorder of the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

This bond is one of several bonds of like date, tenor and effect, but differing in amounts and maturities, issued by said city (or county) under said law for the purpose of providing means for paying for the work and improvements described in the resolution of intention in the assessment district proceedings hereinabove referred to, and to represent an unpaid assessment against publicly owned property. It is secured by the moneys in said redemption fund and by the unpaid amount of said assessment against said publicly owned property, and, including principal and interest is payable exclusively from said redemption fund and neither the (here insert city or county) nor any officer thereof is to be liable for payment otherwise.

The officer, officers, or board of the entity assessed whose duty it is to levy taxes, is obligated to include in the tax levy for each and every fiscal year of the period of the bonds of the series of which this bond is a part, an amount, in addition to moneys for all other purposes, sufficient to pay the interest falling due on all bonds outstanding of this series, plus the amount necessary to pay the principal of all bonds falling due each fiscal year of the life of this series of bonds. This levy shall be included each fiscal year during the life of this series of bonds, and until the principal and interest upon all bonds of this series shall be paid in full. The levy shall be in addition to any levy or levies made for all other purposes, and shall be made notwithstanding that the tax levy exceeds the maximum tax rate that may otherwise be imposed by law.

The Treasurer of the City (County) of \_\_\_\_\_ will on the second day of June 19\_\_\_\_, solely out of said redemption fund, pay to bearer the sum of \_\_\_\_\_ dollars (\$\_\_\_\_) with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at

the rate of \_\_\_\_\_ percent per annum, all as herein specified and at the office of the treasurer of said city (county).

The interest is payable semiannually, to wit: on the second day of December and June of each fiscal year after the date of this bond, upon presentation of the proper coupons therefor; provided, that the first of said coupons is for interest to the second day of December, 19\_\_\_\_, and thereafter the interest coupons are for the semiannual interest. The term "fiscal year" is defined to mean the period from July 1st to and including June 30 of the year following throughout the life of this series of bonds, the first of which fiscal years shall commence the July 1st following the date of this bond. This bond will continue to bear interest after maturity at the rate above stated; provided, it is presented at maturity and payment thereof is refused upon the sole ground that there is not sufficient moneys in said redemption fund with which to pay same. If it is not presented at maturity, interest thereon will run until maturity.

In the event that the officer or board whose duty it is to levy taxes to pay for said bonds fails to provide for a tax levy to pay and discharge the principal of the bonds and the interest thereon, the owner of this bond may compel the levy thereof in the manner hereinafter set forth by writ of mandate. ~~The writ of mandate shall include the right to~~ in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~The court may~~ compel the levy of an amount sufficient to pay principal and interest on all bonds issued to represent the same assessment.

The owner of this bond may use ~~mandamus or other appropriate remedy a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure~~ to compel the officer or board, whose duty it is to levy taxes for said obligated owner, to levy an amount in a given year equal to the amount necessary to pay principal and interest on the unpaid portion of this series of bonds and may continue to use mandamus or other remedy to cause a like amount of principal and interest to be levied each year until the whole of the assessment and this series of bonds and all interest thereon has been paid.

If the owner of this bond is successful in any ~~action~~ proceeding to compel the levy of the tax under this bond ~~he~~ the owner shall be awarded reasonable attorneys' fees as fixed by the court, and costs, and said attorneys' fees and costs shall be included in the tax levied to pay the same.

This bond may be redeemed and paid in advance of maturity upon the second day of December or June in any year by giving notice in the manner provided for giving of notice for redemption of bonds under the provisions of the Improvement Bond Act of 1915, and by paying principal and accrued interest together with a premium equal to \_\_\_\_\_ percent of the principal.

In witness whereof, said \_\_\_\_\_ has caused this bond to be signed by its treasurer and by its clerk and has affixed thereto its corporate seal all on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Treasurer  
\_\_\_\_\_

Clerk

**Comment.** Section 6468 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### California Transportation Commission (part 2)

#### **Sts. & Hy. Code § 30238 (amended). Performance of duties may be compelled**

30238. The holder of any bond may, ~~by mandamus or other appropriate proceeding in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ compel the performance of any of the duties imposed upon any state department, official, or employee or imposed upon the commission or its officers, agents, and employees in connection with the construction, maintenance, operation, and insurance of any bridge, in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge, and in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds. ~~The Subject to Section 1121.120 of the Code of Civil Procedure, the enumeration of rights and remedies in this chapter shall not exclude the exercise or prosecution of any other rights or remedies by the holders of such the bonds.~~

**Comment.** Section 30238 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### El Dorado County Toll Tunnel Authority

#### **Sts. & Hy. Code § 31171 (amended). Rights and remedies of bondholder**

31171. The holder of any bond may ~~by mandamus or other appropriate proceeding , in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ compel the performance of any of the duties imposed upon the authority or its officers, agents, and employees in connection with the construction, maintenance, operation, and insurance of the toll tunnel, in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of the toll tunnel, and in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds. ~~The Subject to Section 1121.120 of the Code of Civil Procedure, the enumeration~~

of rights and remedies in this chapter does not exclude the exercise or prosecution of any other rights or remedies by the holders of ~~such~~ the bonds.

**Comment.** Section 31171 is amended to replace the former references to mandamus and other proceedings with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

### Parking Authorities of Cities or Counties

#### **Sts. & Hy. Code § 33400 (amended). Powers of obligee**

33400. In addition to all other rights conferred on an obligee and subject only to any contractual restrictions binding upon ~~him~~ the obligee, an obligee may:

(a) ~~By mandamus, suit, action, or proceeding at law or in equity~~ In a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, compel the authority and its members, officers, agents or employees to perform every term, provision, and covenant contained in any contract of the authority with or for the benefit of the obligee, to carry out all covenants and agreements of the authority, and to fulfill all duties imposed upon the authority by this part.

(b) By suit, action, or proceeding in equity against a party other than the authority or its members, officers, agents, or employees, enjoin any acts or things which are unlawful and in violation of any of the rights of the obligee.

**Comment.** Subdivision (a) of Section 33440 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Subdivision (b) is amended to make clear that proceedings in equity are authorized only against nongovernmental parties, consistent with Code of Civil Procedure Section 1121.120 (other forms of judicial review replaced for review of governmental action).

### Cities or Parking Districts

#### **Sts. & Hy. Code § 35417 (amended). Ordinance as covenant for protection of bondholder**

35417. The provisions of the ordinance, resolution, or indenture shall constitute covenants for the benefit and protection of the holders of the bonds, and any holder may enforce the covenants ~~by mandamus or other appropriate remedy in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

**Comment.** Section 35417 is amended to replace the former reference to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

#### **Sts. & Hy. Code § 35468 (amended). Tax levy to pay assessment on public property**

35468. If no money is available for the payment of an assessment of public property, the board or officer whose duty it is to levy taxes for the owner of the public property shall include in the next tax levy an amount, in addition to money

for all other purposes, sufficient to pay the assessment and the interest thereon from the date the assessment is recorded, at the rate established for the bonds. When the money received from the tax levy is available, the assessment and interest shall be paid by the officer or board having charge of the disbursement of the funds of the owner. Any duty imposed by this section and Section 35467 may be enforced by action, mandamus, or other proceeding in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 35468 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### California Unemployment Insurance Appeals Board

#### **Unemp. Ins. Code § 409.2 (amended). Judicial review of precedent decision**

409.2. Any interested person or organization may ~~bring an action for declaratory relief in the superior court in accordance with the provisions~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to obtain a judicial declaration as to the validity of any precedent decision of the appeals board issued under Section 409 or 409.1.

**Comment.** Section 409.2 is amended to replace the former reference to an action for declaratory relief with a reference to judicial review under Code of Civil Procedure Sections 1120-1123.950. The former reference to the superior court is continued in substance in Code of Civil Procedure Section 1123.510.

#### **Unemp. Ins. Code § 1338 (technical amendment). Decision allowing benefits**

1338. If the appeals board issues a decision allowing benefits the benefits shall be paid regardless of any further action taken by the director, the appeals board, or any other administrative agency, and regardless of any appeal ~~or mandamus, judicial review,~~ or other proceeding in the courts. If the decision of the appeals board is finally reversed or set aside, no employer's account shall be charged with the benefits paid pursuant to this section, except as provided in Section 1026.

**Comment.** Section 1338 is amended to replace the former reference to mandamus with a reference to judicial review. A petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

#### **Unemp. Ins. Code § 3264 (amended). Denial of liability; judicial review**

3264. If any employer or insurer wholly or partially denies liability upon the claim of an employee for disability benefits under an approved plan, the employee may appeal the denial in the manner provided by law and authorized regulations for an appeal on a claim for benefits payable out of the Disability Fund. All decisions of the Appeals Board denying benefits under this section shall be subject to review by the courts of this State by the exclusive remedy of filing a petition for ~~writ of mandate~~ judicial review under Title 2 (commencing with

Section 1120) of Part 3 of the Code of Civil Procedure. No such petition may be filed, however, until the employee exhausts the administrative remedies provided for in this division, nor may any other action be commenced by an employee upon a denial of his the employee's claim by his the employer or insurer, as the case may be, other than that prescribed herein.

**Comment.** Section 3264 is amended to replace the former reference to a writ of mandate with a reference to judicial review under Code of Civil Procedure Sections 1120-1123.950.

### New Motor Vehicle Board

#### **Veh. Code § 3058 (amended). Judicial review**

3058. Either party may seek judicial review of final orders of the board under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~Time for filing an action for such review shall not be more than 30 days from the date on which the final order of the board is delivered to the parties personally or is sent them by registered mail.~~

**Comment.** Section 3058 is amended to make clear judicial review is under the judicial review provisions of the Code of Civil Procedure, see Code Civ. Proc. §§ 1120-1123.950, and to delete the last sentence. The time to file a petition for review is provided in Code of Civil Procedure Section 1123.640.

#### **Veh. Code § 3068 (amended). Judicial review**

3068. Either party may seek judicial review of final decisions of the board under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~Time for filing for such review shall not be more than 45 days from the date on which the final order of the board is made public and is delivered to the parties personally or is sent them by registered mail.~~

**Comment.** Section 3068 is amended to make clear judicial review is under the judicial review provisions in the Code of Civil Procedure, see Code Civ. Proc. §§ 1120-1123.950, and to delete the last sentence. The time to file a petition for review is provided in Code of Civil Procedure Section 1123.640.

### Public Agencies (part 4)

#### **Veh. Code § 22851.3 (amended). Disposition of low-value vehicles**

22851.3. Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of a public agency authorized pursuant to Section 22669, removes, or causes the removal of, a vehicle pursuant to Section 22669 and the public agency or, at the request of the public agency, the lienholder determines the estimated value of the vehicle is three hundred dollars (\$300) or less, the public agency which removed, or caused the removal of, the vehicle shall cause the disposal of the vehicle under this section, subject to all of the following requirements:

(a) Not less than 72 hours before the vehicle is removed, the peace officer or the authorized public employee has securely attached to the vehicle a distinctive

notice which states that the vehicle will be removed by the public agency. This subdivision does not apply to abandoned vehicles removed pursuant to subdivision (d) of Section 22669 which are determined by the public agency to have an estimated value of one hundred dollars (\$100) or less.

(b) Immediately after removal of the vehicle, the public agency which removed, or caused the removal of, the vehicle shall notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

(c) The public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall obtain a copy of the names and addresses of all persons having an interest in the vehicle, if any, from the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System. This subdivision does not require the public agency or lienholder to obtain a copy of the actual record on file at the Department of Motor Vehicles.

(d) Within 48 hours of the removal, excluding weekends and holidays, the public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall send a notice to the registered and legal owners at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle. A notice sent by the public agency shall be sent by certified or first-class mail, and a notice sent by the lienholder shall be sent by certified mail. The notice shall include all of the following information:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) The location of the place of storage and description of the vehicle which shall include, if available, the vehicle make, license plate number, vehicle identification number, and mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that the vehicle will be disposed of 15 days from the date of the notice.

(5) A statement that the owners and interested persons, or their agents, have the opportunity for a poststorage hearing before the public agency which removed, or caused the removal of, the vehicle to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within 10 days from the date of notice; that, if the owner or interested person, or his or her agent, disagrees with the decision of the public agency, the decision may be reviewed pursuant to ~~Section 11523 of the Government Code~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to ~~Section 11523 of the Government Code~~, the vehicle in question shall not be disposed of.

(e)(1) Any requested hearings shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency which removed

the vehicle may authorize its own officers to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(2) Failure of either the registered or legal owner or interested person, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage validity hearing requirement of this section.

(f) The public agency employing the person, or utilizing the services of a contractor or franchiser pursuant to subdivision (b) of Section 22669, which removed, or caused the removal of, the vehicle and which directed any towing or storage, shall be responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable grounds to believe that the vehicle was abandoned are not established.

(g) No authorization for disposal may be issued by the public agency which removed, or caused the removal of, the vehicle to a lienholder who is storing the vehicle prior to the conclusion of a requested poststorage hearing or any judicial review of that hearing.

(h) If, after 15 days from the notification date, the vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a poststorage hearing was requested or a poststorage hearing was not attended, the public agency which removed, or caused the removal of, the vehicle shall provide to the lienholder who is storing the vehicle, on a form approved by the Department of Motor Vehicles, authorization to dispose of the vehicle. The lienholder may request the public agency to provide the authorization to dispose of the vehicle.

(i) If the vehicle is claimed by the owner or his or her agent within 15 days of the notice date, the lienholder who is storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in Section 22851.12.

(j) Disposal of the vehicle by the lienholder who is storing the vehicle may only be to a licensed dismantler or scrap iron processor. A copy of the public agency's authorization for disposal shall be forwarded to the licensed dismantler within five days of disposal to a licensed dismantler. A copy of the public agency's authorization for disposal shall be retained by the lienholder who stored the vehicle for a period of 90 days if the vehicle is disposed of to a scrap iron processor.

(k) If the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles, either directly or by use of the California Law Enforcement Telecommunications System, the public agency may issue to the lienholder who stored the vehicle an authorization for disposal at any time after the removal.

The lienholder may request the public agency to issue an authorization for disposal after the lienholder ascertains that the names and addresses of the registered and legal owners of the vehicle are not available from the records of

the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System.

(l) A vehicle disposed of pursuant to this section shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

**Comment.** Section 22851.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

### State Water Resources Control Board (part 1)

#### **Water Code § 1126 (amended). Judicial review**

~~1126. (a) Any party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for A person may seek judicial review of the any decision or order under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Unless reconsideration makes available a higher level of review of a decision or order issued under authority delegated to an officer or employee of the board, the right to petition shall not be affected by the failure to seek reconsideration before the board. The time for filing the petition for writ of mandate shall be extended for any person who seeks reconsideration by the board pursuant to this article.~~

~~(b) Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern the judicial proceedings. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a cease and desist order issued pursuant to Article 2 (commencing with Section 1831) of Chapter 12 of Part 2 of Division 2, and in any other case in which the court is authorized by law to exercise its independent judgment on the evidence.~~

~~(c) If no aggrieved party person petitions for a writ of mandate judicial review within the time provided by this section Section 1123.640 of the Code of Civil Procedure, the decision or order of the board shall not be subject to review by any court.~~

**Comment.** Section 1126 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) for an “aggrieved party” to seek review is continued in substance in Code of Civil Procedure Section 1123.220 (“interested person”). The former provision in subdivision (a) specifying the time limit for review is superseded by Code of Civil Procedure Section 1123.640. The former second sentence of subdivision (a) (right to review not affected by failure to seek reconsideration) is continued in substance in Code of Civil Procedure Section 1123.320 (exhaustion of administrative remedies). The former third sentence of subdivision (a) (time to file petition extended during reconsideration) is superseded by Code of Civil Procedure Section 1123.640(c).

The former second sentence of subdivision (b) (independent judgment review) is superseded by Code of Civil Procedure Sections 1123.410-1123.460 (standards of review).

## Department of Water Resources

### **Water Code § 6357.4 (amended). Notice and hearing; judicial review**

6357.4. Before any certificate of approval is revoked by the department, the department shall hold a hearing. Written notice of the time and place of the hearing shall be mailed, at least 20 days prior to the date set for the hearing, to the holder of the certificate. Any interested persons may appear at the hearing and present their views and objections to the proposed action. ~~Any petition for a writ of mandate to inquire into the validity of action of the department revoking a certificate of approval shall be commenced within 30 days after service of notice of the revocation on the holder of the certificate.~~

**Comment.** Section 6357.4 is amended to delete the last sentence. The writ of mandate to review agency action has been replaced by a proceeding for judicial review under Code of Civil Procedure Sections 1120-1123.950. The former last sentence of Section 6357.4 is superseded by Code of Civil Procedure Section 1123.640 (time for filing petition for review in adjudicative proceeding).

### **Water Code § 6461 (amended). Certificate of approval; judicial review**

6461. If, upon inspection or upon completion to the satisfaction of the department of all work that may be ordered, the department finds that the dam or reservoir is safe to impound water, a certificate of approval shall be issued. The owner of the dam or reservoir shall not, through action or inaction, cause the dam or reservoir to impound water following receipt by the owner of a written notice from the department that a certificate will not be issued because the dam or reservoir will not safely impound water. Before ~~sueh~~ the notice is given by the department, the department shall hold a hearing. Written notice of the time and place of the hearing shall be mailed, at least 20 days prior to the date set for the hearing, to the owner of the dam or reservoir. Any interested persons may appear at the hearing and present their views and objections to the proposed action. ~~Any petition for a writ of mandate to inquire into the validity of the action of the department shall be commenced within 30 days after receipt by the owner of a written notice from the department that a certificate of approval will not be issued.~~

**Comment.** Section 6461 is amended to delete the last sentence. The writ of mandate to review agency action has been replaced by a proceeding for judicial review under Code of Civil Procedure Sections 1120-1123.950. The former last sentence of Section 6461 is superseded by Code of Civil Procedure Section 1123.640 (time for filing petition for review in adjudicative proceeding).

## Reclamation Boards

### **Water Code § 9266 (amended). Compelling performance of duties**

9266. If the board or any member, officer, appointee, or employee thereof or any public officer mentioned or referred to in this part fails to perform any duties imposed by this part, the Attorney General shall compel the performance of such

the act by mandamus proceedings or by any other appropriate legal or equitable remedy in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

**Comment.** Section 9266 is amended to replace the former reference to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### State Departments Generally

#### **Water Code § 11708 (amended). Proceedings to compel performance of duties**

11708. The holder of any bond may ~~by mandamus or other appropriate proceedings~~, in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon any state department, official, or employee in connection with any of the following:

- (a) The construction of the project.
- (b) The collection, deposit, application, and disbursement of all revenues derived from the operation and use of the project.
- (c) The deposit and disbursement of the proceeds received from the sale of bonds.

**Comment.** Section 11708 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### State Water Resources Control Board (part 2) and Regional Water Quality Control Boards

#### **Water Code § 13330 (amended). Judicial review**

13330. (a) ~~Not later than 30 days from the date of service of a copy of a~~ A person may seek judicial review of either of the following under Title 2 (commencing with Section 1220) of Part 3 of the Code of Civil Procedure:

(1) A decision or order issued by the state board under this division, other than a decision or order issued pursuant to Article 7 (commencing with Section 13550) of Chapter 7, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof.

~~(b) Any party aggrieved by a~~ (2) A final decision or order of a regional board for which the state board denies review may obtain review of the decision or order of the regional board in the superior court by filing in the court a petition for writ of mandate not later than 30 days from the date on which the state board denies review.

~~(c) (b) If no aggrieved party~~ person petitions for writ of mandate judicial review within the time provided by this section Section 1123.640 of the Code of Civil

Procedure, a decision or order of the state board or a regional board shall not be subject to review by any court.

~~(d) Except as otherwise provided herein, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a decision or order of the state board issued under Section 13320, or a decision or order of a regional board for which the state board denies review under Section 13220, other than a decision or order issued under Section 13323.~~

~~(e) Any party aggrieved by a decision or order issued by the state board under Article 7 (commencing with Section 13550) of Chapter 7 (c) A person may petition for reconsideration or judicial review of a decision or order issued by the state board under Article 7 (commencing with Section 13550) of Chapter 7 in accordance with Chapter 4 (commencing with Section 1120) of Part 1 of Division 2.~~

**Comment.** Section 13330, *as amended* by Chapter 659 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) specifying the time within which review must be sought is superseded by Code of Civil Procedure Section 1123.640. The former provision in subdivisions (a) and (b) for superior court jurisdiction is continued in substance in Code of Civil Procedure Section 1123.510. The provision formerly in subdivision (d) for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review). The former references in subdivisions (a), (b), (c), and (e) to an “aggrieved” party are continued in substance in Code of Civil Procedure Section 1123.220 (“interested” person).

## California Water Districts

### **Water Code § 36391 (amended). Compelling protection of revenues pledged for security**

36391. Except as otherwise provided in any resolution authorizing the issuance of revenue warrants, the holder of any revenue warrant may ~~by mandamus, or other appropriate proceeding~~, in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the board, or upon any officer or employee of the district, in connection with the collection, deposit, investment, application, or disbursement of any revenues pledged for the security of the revenue warrants, or in connection with the deposit, investment, or disbursement of the proceeds received from the sale of the revenue warrants, or in connection with any covenants contained in the resolution authorizing the issuance of the revenue warrants. The Subject to Section 1121.120 of the Code of Civil Procedure, the enumeration of such these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of revenue warrants.

**Comment.** Section 36391 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The last sentence of Section 36391 is made expressly subject to Code of Civil Procedure Section 1121.120, which provides that the judicial review provisions of the Code of Civil Procedure replace other forms of action for judicial review of agency action.

### California Water Storage Districts

#### **Water Code § 44961 (amended). Judicial review; protection of security**

44961. Except as otherwise provided in any resolution authorizing the issuance of revenue warrants, the holder of any revenue warrant may ~~by mandamus or other appropriate proceeding~~, in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the board, or upon any officer or employee of the district, in connection with the collection, deposit, investment, application or disbursement of any revenues pledged for the security of the revenue warrants, or in connection with the deposit, investment or disbursement of the proceeds received from the sale of the revenue warrants, or in connection with any covenants contained in the resolution authorizing the issuance of the revenue warrants. The Subject to Section 1121.120 of the Code of Civil Procedure, the enumeration of such these rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of revenue warrants.

**Comment.** Section 44961 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The last sentence of Section 44961 is made expressly subject to Code of Civil Procedure Section 1121.120, which provides that the judicial review provisions of the Code of Civil Procedure replace other forms of action for judicial review of agency action.

### Kings River Conservation District

#### **Water Code Appendix § 59-33 (amended). Bonds for construction of works**

33. The term “construction” or any of its variants when used in this section, unless the context otherwise requires, means and includes the physical construction, reconstruction, renewal, extension, or repair of works; also the acquisition or control of works or any right therein or thereto by purchase, lease, contract, or in or by any manner whereby any right, title or interest in or to property is capable of being acquired or transferred. For the purpose of providing money and funds to pay the cost and expense of the construction of any works authorized hereunder, the board may issue revenue bonds. The board, if it deems it necessary to issue ~~such the~~ revenue bonds, shall by resolution so declare and state the purpose or purposes for which the revenue bonds are proposed to be

issued, the principal amount of the bonds to be issued therefor, the maximum amount of interest to be paid on ~~such~~ the bonds, which shall not exceed 5 1/2 percent, payable annually or semiannually, and the proposition to be submitted to the voters of the district, and ~~said~~ the resolution shall also state that ~~such~~ the bonds are to be revenue bonds, the principal and interest of which are payable only from the revenues from the use or operation of the works for the construction of which ~~such~~ the bonds are to be issued and are not to be secured by the taxing power of the district. The board shall fix a date upon which an election shall be held for the purpose of authorizing the issuance of ~~such~~ the revenue bonds. Notice of the election shall be given, the election held and the result determined substantially in the manner provided for the incurring of a bonded indebtedness as provided in Section 29 hereof. If from the returns it appears that more than two-thirds of the votes cast at ~~such~~ the election were in favor of the issuance of ~~such~~ the revenue bonds, the board may by resolution provide for the issuance thereof. ~~Such~~ The bonds shall be issued in the name of the district and shall be designated as “Kings River Conservation District Revenue Bonds.” In the resolution providing for the issuance of ~~such~~ the bonds, the board may limit, restrict, and regulate the holding, deposit, investment and application of money consisting of the proceeds from the sale of the bonds or the revenue received from the operation of the works or project to be financed thereby, and ~~such~~ the provisions shall constitute a contract with the holders of the bonds and be binding upon the district as long as the bonds are outstanding; and while any bonds remain outstanding, the powers, duties or existence of the district or any official thereof shall not be diminished or impaired in any manner that will adversely affect the interest and rights of the holders of the bonds. Any holder of any bond may ~~by mandamus or other appropriate proceeding~~ , in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, require and compel the performance of any of the duties imposed upon the district or any official thereof with respect to the construction of the works or project and the collection, deposit, application and disbursement of all revenues derived from the use and operation thereof and the deposit and disbursement of the proceeds received from the sale of ~~such~~ the bonds. In addition thereto the holders of bonds may exercise or prosecute any other rights or remedies which they may have. Temporary or interim bonds, certificates or receipts of any denominations and with or without coupons attached thereto may be issued and delivered until definitive bonds are executed and available for delivery. Any expense incurred by the district for advertising, engraving, printing, clerical, legal or other services necessary to properly perform the services and duties relating to the sale and issuance of ~~such~~ the bonds shall be paid from the proceeds of the sale of ~~such~~ the bonds. ~~Such~~ The bonds shall contain a recital on the face thereof that the payment or redemption of the bonds and the payment of interest thereon is secured by a first and direct charge and lien upon the revenues of any nature whatever received from the operation of the

works for the construction of which the bonds are issued and that neither the payment of the principal, or any part thereof, nor any interest thereon constitutes a liability or obligation of the district except to the extent that ~~such~~ payment can be made from ~~such~~ the revenues. The payment of both principal and interest of all ~~such~~ the bonds shall be secured only by the rates, charges and revenues established or accrued for the use and operations of the works for the construction of which bonds are issued and shall be made from ~~such~~ the revenues. Both redemption and interest payments shall constitute a first and direct charge and lien on all revenues received from the operation of ~~such~~ the works, on all interest accrued from ~~such~~ the revenues, and on all sinking funds created out of ~~such~~ the revenues. The collection of revenue shall be continued until all bonds, with interest thereon, are fully redeemed and paid.

The boards shall determine the form, conditions and denominations of all bonds and the dates which the bonds shall bear. It shall determine the interest rate on all bonds, which shall not exceed 5 1/2 percent per annum; provided, however, that bonds of the same issue may bear different rates of interest. Principal and interest on bonds shall be payable at ~~such~~ the place or places ~~as may be~~ fixed and determined by the board and ~~such~~ the bonds may contain provisions for registration thereof as to principal only or as to both principal and interest. The bonds shall be issued in coupon form with interest payable at ~~such~~ the times ~~as may be~~ determined by the board and shall mature at ~~such~~ the times and in ~~such~~ the amount as the board prescribes. The board may provide for the retirement of ~~such~~ the bonds at any time or times prior to their maturity and in ~~such~~ the manner and upon payment of ~~such~~ the premiums ~~as may be~~ fixed and determined in the proceedings providing for the issuance thereof. ~~Such~~ The bonds may be issued and sold from time to time and in ~~such~~ the amounts ~~as may be~~ necessary in the judgment of the board to provide sufficient funds for the construction of the works and to pay all costs and expenses, including interest due and payable, prior to and during the period of actual construction thereof and for a period of one year after completion thereof, and the proceeds from the bonds are hereby made available for this purpose. ~~Such~~ The bonds may be sold below the par or face value thereof, but the selling price shall not be less than that which will yield the purchaser not to exceed 5 1/2 percent per annum according to the standard tables of bond values, and the sale price shall include the interest which has accrued thereon up to the date of the delivery of the bonds. Successive issues of bonds shall have equal preference with respect to the redemption thereof and the payment of interest thereon, but the district may fix different maturity dates serially or otherwise for successive issues. All ~~such~~ the bonds are hereby declared to be negotiable instruments. All bonds issued and sold shall be sold on sealed proposals to the highest and best bidder after such advertising for bids as the board deems proper, except that the board may reject all bids and thereafter sell the bonds at private sale under ~~such~~ the terms and conditions as the board deems

most advantageous, but not at a price below that of the best bid which was rejected.

The proceeds from the sale of ~~such~~ the bonds shall be deposited by the district in a depository authorized by law to receive ~~such~~ deposits of the district, to the credit of the construction fund for the construction of ~~such~~ the works, and the proceeds shall be paid out solely for the construction of the works, surveys and preparation of plans and specifications therefor, the payment of all other costs and expenses prior to and during construction, the acquisition of the necessary water, water rights, rights of way, easements, lands, electric power, power resources and facilities, other property of every kind and description and any appurtenances to ~~any~~ ~~such~~ the property necessary for ~~such~~ the works and project, the payment of interest becoming due and payable on bonds prior to and during the period of actual construction and for the period of one year after the completion of ~~such~~ the construction, and all costs and expenses during the period of one year after ~~such~~ the completion as the need therefor shall arise. The district may agree with the purchasers of bonds upon any conditions or limitations restricting the disbursement of the proceeds that may be deemed advisable for the purpose of assuring the proper application thereof. From the money deposited in the construction fund, the board shall transfer to the place or places of payment named in the bonds the sums required to pay interest as it becomes due on all bonds sold and outstanding for the construction of the works during the period of actual construction and during the period of one year after completion thereof, and thereafter shall transfer from the revenue fund into which shall be paid all revenues accruing from the use and operation of ~~said~~ the works to the place or places named in the bonds the sum required to pay interest on the bonds and redeem the principal thereof, as ~~such~~ the interest payments and bond redemptions fall due for all bonds issued and sold. All funds transferred for the payment of principal and interest on ~~such~~ the bonds shall be segregated and applied solely for the payment of principal and interest.

Any person or public or private corporation may, by contract with the district, underwrite or assume the payment in whole or in part of the cost of the construction of ~~any~~ ~~such~~ the works, and in the event ~~such~~ the contract shall be made, all payments received thereunder shall be deemed to be revenues of ~~such~~ the works and shall be subject to the terms and provisions of this section respecting the revenues thereof.

Any surplus which exists in the construction fund shall be applied to the retirement of bonds issued for the construction of the works by purchase of call; provided, however, that in the event the bonds cannot be purchased at a price satisfactory to the board and are not by their terms callable prior to maturity, ~~such~~ the surplus shall be paid into the fund applicable to the payment of principal and interest of the bonds and shall be used for that purpose; provided further, however, the proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying ~~such~~ the surplus

to the purchase and call of outstanding bonds. The terms upon which the bonds shall be purchased or called and the conditions provided for in the proceedings authorizing their issuance shall be followed and observed in the application and use of such the surplus.

In like manner the board may issue any revenue bonds to refund and pay outstanding revenue bonds; provided, however, that such the bonds shall not be for a higher rate of interest than the bonds proposed to be refunded, and the purchase price paid therefor shall not be less than the total amount of interest and principal accrued upon the bonds to be refunded, and the board may provide for the exchange of refunding bonds for the original bonds; provided, the face value of the refunding bonds so exchanged shall not exceed the face value of the original bonds.

**Comment.** Section 33 is amended to replace the former reference to mandamus and other actions with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

## Yolo County Flood Control and Water Conservation District

### **Water Code Appendix § 65-4.8 (amended). Notice of ground water charge**

4.8. The district, after the levying of the ground water charge, shall give notice thereof to each operator of each water-producing facility in the lands within the district in which such the charge or charges are levied as disclosed by the records of said the district, which notice shall state the rate for each class of water of the ground water charge applicable to said the water-producing facility for each acre-foot of water to be produced during the ensuing water year. Said The notice may be sent by postal card or by other first-class mail and with postage prepaid by the district.

Any person interested in land or in a water-producing facility within the district and aggrieved by a decision of the board respecting the establishment or levying of a ground water charge or charges may obtain court review thereof in the Superior Court of the State of California in and for the County of Yolo ~~by filing a petition for a writ of mandate not later than 30 days after the mailing of the notice provided for in this section. The proceeding shall be governed by under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure Section 1094.5 and the superior court shall exercise its independent judgment on the evidence.~~

**Comment.** Section 4.8 is amended to revise the reference to the judicial review provisions of the Code of Civil Procedure. The former provision specifying the time within which review must be sought is superseded by Code of Civil Procedure Section 1123.640. The former provision in the last sentence of Section 4.8 for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

Sierra Valley Groundwater Management District; Long Valley Groundwater Basin

**Water Code Appendix § 119-406 (amended). Judicial review**

406. Within 60 days after publication of any ordinance or resolution establishing or in furtherance of a groundwater management program, any interested party may ~~file with the superior court~~ a petition for writ of mandate for the judicial review thereof under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~Failure to file such an action petition for judicial review~~ shall not preclude a party from challenging the validity of ~~such an~~ the ordinance or resolution in any judicial proceedings brought to enforce ~~such the~~ ordinance or resolution or for ~~such~~ other civil remedies, including the imposition of civil penalties. The right to seek judicial review shall not be affected by the failure to seek reconsideration from the board of directors.

**Comment.** Section 406 is amended to replace the former reference to a writ of mandate with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Mono County Tri-Valley Groundwater Management District

**Water Code Appendix § 128-504 (amended). Review of ordinance or resolution**

504. Within 60 days after publication of any ordinance or resolution establishing or in furtherance of a groundwater management program, any interested party may ~~file with the superior court~~ a petition for writ of mandate for the judicial review thereof under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~Failure to file such an action petition for judicial review~~ shall not preclude a party from challenging the validity of the ordinance or resolution in any judicial proceedings brought to enforce the ordinance or resolution or for other civil remedies, including the imposition of civil penalties. The right to seek judicial review shall not be affected by any failure to seek reconsideration from the board.

**Comment.** Section 504 is amended to replace the former reference to a writ of mandate with a reference to judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Honey Lake Valley Groundwater Management District

**Water Code Appendix § 129-421 (amended). Review of ordinance or resolution**

421. Within 60 days after publication of any ordinance or resolution establishing or in furtherance of a groundwater management program, any interested party may ~~file with the superior court~~ a petition for writ of mandate for the judicial review thereof under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. ~~Failure to file an action petition for judicial review~~ does not preclude a party from challenging the validity of the ordinance

or resolution in any judicial proceedings brought to enforce the ordinance or resolution or for any other civil remedies, including the imposition of civil penalties. The right to seek judicial review shall not be affected by the failure to seek reconsideration from the board of directors.

**Comment.** Section 421 is amended to replace the former reference to a writ of mandate with a reference to judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

### San Diego Area Wastewater Management District

**Water Code Appendix § 133-510 (amended). (Operative date contingent) Bonds, notes, and other evidence of indebtedness; dissolution of district or withdrawal of territory**

510. (a) Notwithstanding any other provisions of law, all ordinances, resolutions, and other proceedings relating to the issuance by the district of any general obligation bonds, general obligation bonds with a pledge of revenues, revenue bonds, negotiable promissory notes, and any other evidences of indebtedness or liability constitute a contract between the district and the holders of the bonds, notes, or other evidences of indebtedness or liability. That contract is enforceable against the district and any or all of its successors or assigns, by mandamus a holder in a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure or other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction.

(b) Nothing contained in this act relieves the district, or the territory within the district, from any bonded or other debt or liability contracted by the district. Upon dissolution of the district, or upon withdrawal of territory from the district, the property formerly included within the district or withdrawn from the district shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal the same as if the district had not been dissolved or the territory withdrawn. The successors or assigns shall provide for the payment of the bonded and other indebtedness and liabilities. Except as may otherwise be provided in the proceedings for the authorization, issuance, and sale of and revenue bonds or general obligation bonds secured by a pledge of revenues, revenues derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the district shall be pledged, charged, assigned and have a lien for payment of the bonds as long as the bonds are outstanding, regardless of any change in ownership, operation or control of the revenue-producing improvements, works, facilities or property. The assigns or successors shall continue to maintain and operate the revenue-producing improvements, works, facilities, or property as long as the bonds are outstanding.

**Comment.** Section 510 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those

provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

### San Gabriel Basin Water Quality Authority

#### **Water Code Appendix § 134-604 (amended). (Operative until July 1, 2002) Evidences of indebtedness**

604. The authority may issue negotiable promissory notes and bond anticipation notes to acquire funds for any purposes authorized by this act subject to Sections 71810, 71811, 71812, 71813, and 71814 of the Water Code.

(b) Promissory notes, bond anticipation notes, bonds, certificates of participation, and other evidences of indebtedness issued by the authority shall be payable from any revenues or moneys of the authority available therefore and not otherwise pledged and shall be negotiable even though they are payable from special funds. The authority may do any of the following with regard to any notes, bonds, certificates, or other evidences of indebtedness:

(1) Sell them at public or private sale for prices, and upon terms and conditions, determined by the authority.

(2) Sell them as serial or term instruments or both.

(3) Have them bear dates, and mature at times, not to exceed 20 years from their respective dates, bear interest at rates, be payable at times, be in denominations, be in forms, either coupon or registered, carry registration privileges, be executed in the manner, be payable in lawful money of the United States at places, and be subject to terms of redemption as the indenture, trust agreement, or resolution relating to those instruments provides.

(4) Secure them by a trust agreement or indenture by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or outside the state. The trust agreement, indenture, or the resolution providing for the issuance of the instruments, may pledge or assign the revenues of the authority under the provisions of this act. The indenture, trust agreement, or resolution providing for the issuance of the instruments may contain provisions for protecting and enforcing the rights and remedies of the holders determined by the authority to be reasonable and proper and not in violation of law. Any trust agreement or indenture may set forth the rights and remedies of the holders and of the trustee or trustees, and may restrict the individual right of action of holders. In addition, the indenture, trust agreement, or resolution may contain other provisions determined by the authority to be reasonable and proper for the security of the holders.

(c) Any evidence of indebtedness issued under this act does not constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any political subdivision, other than the authority, but shall be payable solely from the funds of the authority specified in this act. All instruments of debt shall contain on the face thereof a statement to the effect that

neither the state nor the authority is required to pay the same, or the interest thereon, except from certain revenues of the authority and that neither the faith and credit nor the taxing power of the state or of any political subdivision is pledged to the payment of the principal of, or the interest on, those instruments. The issuance of instruments of debt under the provisions of this act shall not require the state or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment.

(d) Any holder of instruments of debt issued under this act or any of the coupons appertaining thereto, and the trustee or trustees under any indenture or trust agreement, except to the extent the rights granted in this act may be restricted by any resolution authorizing the issuance of, or ~~any such~~ the indenture or trust agreement securing, the instruments, may, either at law or in equity, by suit, action, ~~mandamus~~, proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, or other proceedings, protect and enforce any and all rights granted by state law, this act, resolution, indenture, or trust agreement, and may enforce and compel the performance of all duties required by this act or by the resolution, indenture, or trust agreement to be performed by the authority or by any officer, employee, or agent thereof.

(e) The authority may provide for the issuance of instruments of debt of the authority for the purpose of refunding any instruments of debt or any series or issue of instruments of outstanding debt of the authority, including the payment of any redemption premium thereon and any interest accrued, or to accrue, to the date of redemption until the purchase or maturity of instruments of debt.

(f) Any instruments of debt issued under this act, their transfer, and the income therefrom, are not subject to taxation by the state or any political subdivision of the state.

(g) The state does pledge to, and agree with, the holders of the instruments of debt issued pursuant to this act, and with those parties who may enter into contracts with the authority pursuant to the provisions of this act, that the state will not limit, alter, or restrict the rights vested in the authority to fulfill the terms of any agreements made with the holders of instruments of debt authorized by this act, and with the parties who may enter into contracts with the authority pursuant to the provisions of this act, or in any way impair the rights or remedies of the holders of the instruments of debt or the parties until the instruments of debt, together with interest thereon, are fully paid and discharged and the contracts are fully performed on the part of the authority. The authority as a public body corporate and politic may include the pledge herein made in its debt instruments and contracts.

**Comment.** Section 604 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

## Willow Creek Valley Groundwater Management District

### **Water Code Appendix § 135-421 (amended). Judicial review**

421. Within 60 days after publication of any ordinance or resolution establishing, or in furtherance of, a groundwater management program, any interested party may ~~file with the superior court~~ a petition for writ of mandate for the judicial review thereof under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. Failure to ~~file an action petition for judicial review~~ does not preclude a party from challenging the validity of the ordinance or resolution in any judicial proceedings brought to enforce the ordinance or resolution or for any other civil remedies, including the imposition of civil penalties. The right to seek judicial review shall not be affected by the failure to seek reconsideration from the board of directors.

**Comment.** Section 421 is amended to replace the former reference to a writ of mandate with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

## Regional Centers for the Developmentally Disabled

### **Welf. & Inst. Code § 4668 (amended). Actions void; judicial review**

4668. (a) Any action taken by a regional center governing board in violation of this article is null and void. Any interested person may ~~commence an action by mandamus, injunction, or declaratory relief~~ petition for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure for the purpose of obtaining a judicial declaration that an action taken in violation of this article is null and void.

(b) A court may award costs and reasonable attorney's fees to the plaintiff petitioner in ~~an action~~ a proceeding brought pursuant to this section where it is found that a regional center board has violated the provisions of this article.

(c) This section does not prevent a regional center governing board from curing or correcting an action challenged pursuant to this section.

**Comment.** Section 4668 is amended to replace the former reference to an action by mandamus, injunction, or declaratory relief with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

## Counties

### **Welf. & Inst. Code § 5655 (amended). Cooperation with county; sanctions**

5655. (a) All departments of state government and all local public agencies shall cooperate with county officials to assist them in mental health planning. The State Department of Mental Health shall, upon request and with available staff, provide consultation services to the local mental health directors, local governing bodies, and local mental health advisory boards.

(b) If the Director of Mental Health considers any county to be failing, in a substantial manner, to comply with any provision of this code or any regulation, or with the approved county Short-Doyle plan, the director shall order the county to appear at a hearing, before the director or the director's designee, to show cause why the department should not take action as set forth in this section. The county shall be given at least 20 days' notice of ~~such~~ the hearing. The director shall consider the case on the record established at the hearing and make final findings and decision.

(c) If the director determines that there is or has been a failure, in a substantial manner, on the part of the county to comply with any provision of this code or any regulations or the approved county Short-Doyle plan, and that administrative sanctions are necessary, the department may invoke any, or any combination of, the following sanctions:

(a) (1) Withhold part or all of state mental health funds from ~~such~~ the county.

(b) (2) Require the county to enter into negotiations for the purpose of assuring county Short-Doyle plan compliance with ~~such~~ laws and regulations.

(c) (3) ~~Bring an action in mandamus or such other action in court as may be appropriate a proceeding for judicial review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure to compel compliance. Any such action~~ The proceeding shall be entitled to a preference in setting a date for a hearing.

**Comment.** Section 5655 is amended to replace the former reference to mandamus and other actions with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

#### State Department of Social Services (part 1)

##### **Welf. & Inst. Code § 10605 (amended). Noncompliance in county administration; review**

10605. If the director believes that a county is substantially failing to comply with any provision of this code or any regulation pertaining to any program administered by the department, and the director determines that formal action may be necessary to secure compliance, he or she shall inform the county welfare director and the board of supervisors of that failure. The notice to the county welfare director and board of supervisors shall be in writing and shall allow the county a specified period of time, not less than 30 days, to correct its failure to comply with the law or regulations. If within the specified period the county does not comply or provide reasonable assurances in writing that it will comply within the additional time as the director may allow, the director may take one or both of the following actions:

(a) Bring an action for injunctive relief to secure immediate compliance.

Any county which is found to be failing in a substantial manner to comply with the law or regulations pertaining to any program administered by the department

may be enjoined by any court of competent jurisdiction. The court may make orders or judgments as may be necessary to secure county compliance.

(b) Order the county to appear at a hearing before the director with the State Social Services Advisory Board Committee on Welfare and Social Services to show cause why the director should not take administrative action to secure compliance. The county hearings shall be conducted pursuant to the rules and regulations of the department.

If the director determines, based on the record established at the hearing and the advice of the State Social Services Advisory Board Committee on Welfare and Social Services, that the county is failing to comply with the provisions of this code or the regulations of the department, or if the State Personnel Board certifies to the director that a county is not in conformity with established merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that administrative sanctions are necessary to secure compliance, the director may invoke either of the following sanctions:

(1) Withhold all or part of state and federal funds from the county until the county demonstrates to the director that it has complied.

(2) Assume, temporarily, direct responsibility for the administration of all or part of any or all programs administered by the department in the county until the time as the county provides reasonable assurances to the director of its intention and ability to comply. During the period of direct state administrative responsibility, the director or his or her authorized representative shall have all of the powers and responsibilities of the county director, except that he or she shall not be subject to the authority of the board of supervisors.

In the event that the director invokes sanctions pursuant to this section, the county shall be responsible for providing any funds as may be necessary for the continued operation of all programs administered by the department in the county. If a county fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in directly administering any program in the county, the Controller may deduct an amount certified by the director as necessary for the continued operation of these programs by the department from any state or federal funds payable to the county for any purpose.

Nothing in this section shall be construed as preventing a county from seeking judicial review ~~under Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure of any final decision of the director made after a hearing conducted under this section. This review shall be the exclusive remedy available to the county for review of the director's decision.

Nothing in this section shall be construed as preventing the director from bringing an action ~~for writ of mandamus or any other action~~ in court as may be appropriate to insure that there is no interruption in the provision of benefits to

any person eligible therefor under the provisions of this code or the regulations of the department.

**Comment.** Section 10605 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Welf. & Inst. Code § 10605.2 (amended). County noncompliance**

10605.2. If the director believes that a county probation department is substantially failing to comply with any provision of this code or any regulation pertaining to the placement activities required to be performed by the probation department to ensure that the needs of wards in placements whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program are met, and the director determines that formal action may be necessary to secure compliance, he or she shall inform the chief probation officer, the presiding judge of the juvenile court, and the board of supervisors of that failure. The notice to the chief probation officer, the presiding judge of the juvenile court, and board of supervisors shall be in writing and shall allow the county probation department a specified period of time, not less than 30 days, to correct its failure to comply with the law or regulations. If within the specified period the county probation department does not comply or provide reasonable assurances in writing that it will comply within the additional time as the director may allow, the director may take one or both of the following actions:

(a) Bring an action for injunctive relief to secure immediate compliance.

Any county probation department that is found to be failing in a substantial manner to comply with the law or regulations pertaining to placement activities required to be performed by the probation department to ensure that the needs of wards in placement whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program are met, may be enjoined by any court of competent jurisdiction. The court may make orders or judgments as may be necessary to secure county probation department compliance.

(b) Order the county probation department to appear at a hearing before the director with the State Social Services Advisory Board Committee on Welfare and Social Services to show cause why the director should not take administrative action to secure compliance. The hearing shall be conducted pursuant to the rules and regulations of the department.

If the director determines, based on the record established at the hearing and the advice of the State Social Services Advisory Board Committee on Welfare and Social Services, that the county probation department is failing to comply with the provisions of this code or the regulations pertaining to the placement activities required to be performed by the probation department to ensure that the needs of wards in placement funded through the Aid to Families with Dependent Children-Foster Care program are met, or if the State Personnel Board certifies to the director that a county probation department is not in conformity with established merit system standards under Part 2.5 (commencing with Section

19800) of Division 5 of Title 2 of the Government Code, and that administrative sanctions are necessary to secure compliance, the director may invoke either of the following sanctions:

(1) Withhold all or part of state and federal funds from the county probation department until the county probation department demonstrates to the director that it has complied.

(2) Assume, temporarily, direct responsibility for fulfilling the placement activities required by law and regulations to ensure that the needs of the wards in placement funded through the Aid to Families with Dependent Children-Foster Care program are met, until the time as the county probation department provides reasonable assurances to the director of its intention and ability to comply. During the period of direct state administrative responsibility, the director or his or her authorized representative shall have all of the powers and responsibilities of the chief probation officer with regard to placement requirements for wards whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, except that he or she shall not be subject to the authority of the board of supervisors.

In the event that the director invokes sanctions pursuant to this section, the county probation department shall be responsible for providing any funds as may be necessary for the continued fulfillment of placement activities as required by law and regulation for the placement of wards whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program administered on behalf of the department in the county probation department. If a county probation department fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in performing the activities required for the placement of wards whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program in the county probation department, the Controller may deduct an amount certified by the director as necessary for the continued operation of these programs by the department from any state or federal funds payable to the county probation department for any purpose.

Nothing in this section shall be construed as preventing a county probation department from seeking judicial review under ~~Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure of any final decision of the director made after a hearing conducted under this section. This review shall be the exclusive remedy available to the county probation department for review of the director's decision.

Nothing in this section shall be construed as preventing the director from bringing an action ~~for writ of mandamus or any other action~~ in court as may be appropriate to ensure that there is no interruption in the provision of benefits to any person eligible therefor under the provisions of this code or the regulations of the department.

**Comment.** Section 10605.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Department of Health Services (part 5)

**Welf. & Inst. Code § 10744 (amended). County noncompliance; sanctions; review**

10744. (a) If the director considers a county director to be failing, in a substantial manner, to comply with any provision of this code or any regulation pertaining to the administration of health care services and medical assistance, ~~he~~ the director shall put the county director on written notice to that effect, and shall give a copy of the notice to the board of supervisors.

(b) If within 60 days the county director fails to give reasonable assurance that ~~he~~ the county director is complying and will continue to comply with the laws and regulations, the director shall order the county to appear at a hearing, before ~~him~~ the director to show cause why ~~he~~ the director should not take action to secure compliance. The county shall be given at least 30 days notice of ~~such~~ the hearing. The director shall consider the case on the record established at the hearing and, within 30 days, shall render proposed findings and a proposed decision on the issues. The proposed findings and decisions shall be submitted to the county, and the county shall have an opportunity to appear within 10 days at ~~such~~ the time and place ~~as may be~~ fixed by the director for the purpose of presenting oral arguments respecting the proposed findings and decision. Thereupon, the director shall make ~~his~~ final findings and decisions.

(c) If the director determines that there is a failure on the part of the county to comply with the provisions of this code or the established regulations, or if the State Personnel Board certifies to the director that a county is not in conformity with established merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that administrative sanctions are necessary to secure compliance, the director may invoke any of the following sanctions:

(a) (1) Withhold part or all of state and federal funds from ~~such~~ the county until the county shall make a showing to the director of compliance; ~~or~~ .

(b) (2) Assume, temporarily, direct responsibility for the administration of any or all state-aided health care services and medical assistance programs in ~~such~~ the county until the county shall provide reasonable assurance to the director of its intention and ability to comply with ~~such~~ laws and regulations. During ~~such~~ the period of state administrative responsibility for county programs, the director or ~~his~~ the director's authorized representative shall have all of the powers and responsibilities of the county director, with the exception that ~~he~~ the director or authorized representative shall not be subject to the authority of the board of supervisors; ~~or~~ .

(e) ~~(3)~~ Bring an action ~~in mandamus or such other action~~ in court as may be appropriate to compel compliance. ~~Any such~~ The action shall be entitled to a preference in setting a date for a hearing.

(d) Nothing in this section shall be construed as relieving the board of supervisors of the responsibility to provide funds necessary for the continued services required by law.

(e) Nothing contained in this section shall be construed as preventing a county from seeking judicial review of action taken by the director pursuant to this section under ~~Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure ~~or, except in cases arising under Sections 10962 and 10963, from seeking injunctive relief when deemed appropriate.~~

**Comment.** Section 10744 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former last clause of the last sentence of Section 10744 concerning injunctive relief is continued in substance in Code of Civil Procedure Section 1123.730 (court may grant injunctive relief on judicial review).

### State Department of Social Services (part 2)

#### **Welf. & Inst. Code § 11468.5 (amended). Judicial review**

11468.5. The provider or foster family agency may request judicial review of the final decision of the department pursuant to Section 11468.4 ~~in accordance with Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, within six months of the issuance of the director's final decision.

**Comment.** Section 11468.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

#### **Welf. & Inst. Code § 11468.6 (amended). Review of group home audit findings**

11468.6. (a) The director shall establish administrative procedures to review group home audit findings.

(b) A group home provider, including an RCL 13 or RCL 14 provider, may request a hearing to examine any disputed audit finding that results in an overpayment or adjustment to the provider's rate, or that reduces the provider's overall RCL point total pursuant to Section 11462. The administrative review process established in this section shall not examine issues regarding the authority of the department to set rates, determine RCL points, conduct audits, or collect overpayments from a group home provider.

(c) The administrative appeal process established pursuant to this section shall commence with an informal hearing, and provide for a formal administrative hearing of the informal level appeal record and decision by a hearing officer appointed by the director. The department shall make every effort to contract with the State Department of Health Services to conduct the informal hearings required by this subdivision during the first year of implementation of this section.

(d) An amended audit report may be issued by the department for the fiscal period or periods for which the proceedings are pending under this section, if at the time of the hearing, the group home provider submits additional documentation or evidence that was not available to the department at the time of the audit. The proceedings shall be suspended for a period not exceeding 120 days while the department completes an amended audit and the provider identifies any additional disputes that result from an amended audit report. Additional audit findings included in an amended audit report may also be included in the proceedings at the request of the provider.

(e) Within 120 days after submission of a proposed decision, the director shall do one of the following:

(1) Adopt the proposed decision with or without reading or hearing the record.

(2) Reject the proposed decision and adopt an alternative decision based upon the documentary and electronically recorded record, with or without taking additional evidence.

(3) Refer the matter to the same or a different hearing officer to take additional evidence. If the case is so assigned, the hearing officer shall, within 90 days, prepare a proposed decision, based upon the additional evidence and the documentary and electronically recorded record of the prior hearing. The director may then take one of the actions described in this subdivision in regard to the new proposed decision. The director may return a proposed decision twice on the same appeal.

(f)(1) The director's decision shall be final when the decision is mailed to the parties. However, the director retains jurisdiction to correct clerical errors.

(2) Copies of the final decision of the director and the hearing officer's proposed decision, if it was not adopted by the director, shall be mailed by certified mail to the parties.

(g) The group home provider may request judicial review of the final decision of the director pursuant to this section ~~in accordance with Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedures Procedure~~ within six months of the issuance of the director's final decision.

**Comment.** Section 11468.6, *as amended* by Chapter 671 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

#### State Department of Health Services (part 5)

##### **Welf. & Inst. Code § 14087.27 (amended). Judicial or administrative review**

14087.27. (a) Notwithstanding any other provision of law, ~~judicial review pursuant to Section 1085 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,~~ shall be available to resolve disputes relating to the terms, performance, or termination of contracts entered into pursuant to this

article, or any act, failure to act, conduct, order, or decision of the special hospital negotiator or the commission which violate the provisions of this article.

(b) Subdivision (a) shall not apply to recoupment efforts based on an audit or review of hospital performance of the terms and conditions of the negotiated contract. These recoupment efforts shall be reviewable pursuant to Section 14171.

(c) As an alternative for a contract hospital, to the remedy provided in subdivision (a), contracts entered into pursuant to this article shall provide for administrative review of disputes relating to performance under the contracts. The proceedings for review of the disputes shall be conducted by an independent hearing examiner who shall render a proposed decision. The final decision shall be rendered by the director.

(d) Venue for judicial review pursuant to this section shall lie only in counties in which the Attorney General maintains an office.

**Comment.** Section 14087.27 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

**Welf. & Inst. Code § 14105.405 (amended). (Operative until January 1, 1999) Fair hearing**

14105.405. (a) A Medi-Cal beneficiary, within 90 days of receipt of the director's notice to beneficiaries pursuant to subdivision (g) of Section 14105.33, informing them of the decision to delete or suspend a drug from the list of contract drugs, may request a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2.

(b) Any beneficiary filing a fair hearing request regarding the deletion or suspension of a drug from the formulary shall be granted a treatment authorization request for that drug until a final decision is adopted by the director. Should the beneficiary seek judicial review of the director's decision, a treatment authorization request shall be granted for that drug until a final decision is issued by the court.

(c)(1) Any Medi-Cal beneficiary, within one year of the director's decision pursuant to Section 10959, may ~~file a petition with the superior court, under the provisions of Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, praying for a judicial review of both the legal and factual basis for the director's decision.

(2) The director shall be the sole respondent in these proceedings.

(d) Any Medi-Cal beneficiary injured as a result of being denied a drug which is determined to be medically necessary may sue for injunctive or declaratory relief to review the director's decision to delete or suspend a drug from the list of contract drugs.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

**Comment.** Section 14105.405, *as amended* by Chapter 197 of the Statutes of 1996, is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

**Welf. & Inst. Code § 14171 (amended). Administrative appeal; interest**

14171. (a) The director shall establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination made pursuant to Sections 10722 and 14170.

(b) Different administrative appeal processes may be established by the director for grievances or complaints arising from the determinations of a tentative or final settlement based on audit or examination findings made by or on behalf of the department pursuant to Sections 10722 and 14170, except that consistent with existing practice, no administrative appeal shall be available for tentative settlement of cost reports.

(c) The administrative appeal process established by the director for final settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall include the procedural requirements of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The impartial hearing shall be conducted by an administrative law judge appointed by the director. The director may subcontract with the Office of Administrative Hearings to conduct hearings on cases involving complicated issues of fact or law, or to reduce the backlog of cases.

(d) The administrative appeal process established by the director for tentative settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall be an informal process which, however, guarantees a provider the right to present any grievance or complaint to the department in writing. Any subsequent hearings shall be conducted in an informal manner and shall be held at the discretion of the department.

(e) The time limitations in subdivisions (f) and (g) for the impartial hearing and the final decisions are mandatory. If the department fails to conduct the hearing or to adopt a final decision thereon within the time limitations provided in subdivisions (f) and (g), the amount of any overpayment which is ultimately determined by the department to be due shall be reduced by 10 percent for each 30-day period, or portion thereof, that the hearing or the decision, or both, are delayed beyond the time limitations provided in subdivisions (f) and (g). However, the time period shall be extended by either of the following:

(1) Delay caused by a provider.

(2) Extensions of time granted a provider at its sole request or at the joint request of the provider and the department.

(f)(1) Notwithstanding subdivision (c), the administrative appeal process established by the director shall commence with an informal conference with the

provider, a representative of the department, and the administrative law judge. The informal conference shall be conducted no later than 90 days after the filing of a timely and specific statement of disputed issues by the provider. The administrative law judge, when appropriate, may assign the administrative appeal to an informal level of review where efforts could be made to resolve facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law. The review conducted at this informal level shall be completed no later than 180 days after the filing of a timely and specific statement of disputed issues by the provider.

(2) Nothing in this subdivision shall prohibit the provider from presenting any unresolved grievances or complaints at an impartial hearing pursuant to subdivision (c). The impartial hearing shall be conducted no later than 300 days after the filing of a timely and specific statement of disputed issues by the provider. For noninstitutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 60 days after the closure of the record of the impartial hearing. For institutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 180 days after the closure of the record of the impartial hearing.

(3)(A) Subject to subdivision (g), a final decision in a noninstitutional provider appeal shall be adopted within 180 days after the closure of the record of the impartial hearing, and a final decision in an institutional provider appeal shall be adopted within 300 days after the closure of the record of the impartial hearing.

(B) The department shall mail a copy of the adopted decision to all parties within 30 days of the date of adoption of the decision.

(g) In the event the director intends to modify a proposed decision, on or before the 180th day following the closure of the record of the hearing for noninstitutional providers or the 300th day following the closure of the record of the hearing for institutional providers, the director shall provide written notice of his or her intention to the parties and shall afford the parties an opportunity to present oral and written argument. Following this notice, on or before the 240th day following the closure of the record of the hearing for noninstitutional providers or the 420th day following closure of the record of the hearing for institutional providers, or within that additional time period as is granted pursuant to the sole request of a provider or at the joint request of the provider and the department, the director shall issue a modified decision.

(h) In the event recovery of a disallowed payment has been made by the department, a provider who prevails in an appeal of a disallowed payment shall be entitled to interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund, commencing on the date the appeal is formally accepted by the department or the date payment is received by the department, whichever is later.

(i) Except as provided in subdivision (j), commencing 60 days after issuance of the first statement of account status or demand for repayment resulting from an

audit or examination made pursuant to Sections 10722 and 14170, interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund during the month the first statement of account status or demand for repayment was issued shall be assessed against any unrecovered overpayment due to the department.

(j)(1) Commencing on the day following the last day of the period covered by an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate established under Section 19269 of the Revenue and Taxation Code which is in effect on the date of the commencement of that interest shall be assessed against any unrecovered overpayment due to the department by providers of durable medical equipment or incontinence supplies.

(2) Interest which accrues under this subdivision for recoupment of an overpayment based on the lack of medical necessity for a previously approved claim shall commence to accrue on the date of written demand by the department.

(k) The final decision of the director shall be reviewable ~~in accordance with Section 1094.5~~ under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure within six months of the issuance of the director's final decision.

**Comment.** Section 14171 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

## Department of Rehabilitation

### **Welf. & Inst. Code § 19709 (amended). Judicial review**

19709. (a) The appellant, within six months after receiving notice of the board's final decision, may file a petition ~~with the superior court, under Section 1094.5~~ Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, praying for a judicial review of the entire proceedings in the matter, ~~upon questions of law involved in the case.~~ The review, if granted, shall be the exclusive remedy available to the appellant for review of the board's final decision. The department shall be the sole respondent in the proceedings.

(b) No filing fee shall be required for the filing of a petition pursuant to this section. Any of these petitions to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The appellant shall be entitled to reasonable attorney's fees and costs, if he or she obtains a decision in his or her favor.

**Comment.** Section 19709 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) limiting review to questions of law is not continued. Both questions of law and questions of fact are reviewable under the Code of Civil Procedure. See Code Civ. Proc. §§ 1123.420-1123.460.